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February 16, 2011

**VIA HAND DELIVERY**

The Honorable Jocelyn Boyd  
Chief Clerk and Administrator  
The Public Service Commission  
Of South Carolina  
P.O. Drawer 11649  
Columbia, SC 29211

RECEIVED  
2011 FEB 16 PM 6:21  
SC PUBLIC SERVICE  
COMMISSION

RE: Interconnection Agreement between Birch Telecom of the South, Incorporated d/b/a  
Birch Communications and Frontier Communications of the Carolinas, Incorporated

Dear Ms. Boyd:

Enclosed is a hard copy of the Interconnection Agreement between the above referenced  
companies, which is being filed with your office for information and/or approval. If you  
have any questions concerning this matter please do not hesitate to contact me at (803)  
254-5736.

Sincerely,

Afton Ellison

Enclosure

cc: James M. McDaniel, Program Manager of Telecommunications - ORS

RECEIVED  
2011 FEB 16 PM 4:21  
SC BIRCH SERVICE  
OPERATION

**AGREEMENT FOR  
LOCAL INTERCONNECTION**

**by and between**

**BIRCH TELECOM OF THE SOUTH, INC. d/b/a BIRCH COMMUNICATIONS**

**and**

**FRONTIER COMMUNICATIONS OF THE CAROLINAS INC.**

**FOR THE STATE OF**

**SOUTH CAROLINA**

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## **AGREEMENT**

### **PREFACE**

This Agreement ("Agreement") shall be deemed effective as of January 1, 2011 (the "Effective Date"), between BIRCH TELECOM OF THE SOUTH, INC. d/b/a BIRCH COMMUNICATIONS ("Birch"), a corporation organized under the laws of the State of Delaware, with offices at 2300 Main Street, Suite 600, Kansas City, MO 64108 and FRONTIER COMMUNICATIONS OF THE CAROLINAS INC. ("Frontier"), a corporation organized under the laws of the State of Delaware with offices at 180 South Clinton Avenue, Rochester, NY 14646 (Frontier and Birch may be referred to hereinafter, each, individually as a "Party", and, collectively, as the "Parties").

### **GENERAL TERMS AND CONDITIONS**

In consideration of the mutual promises contained in this Agreement, and intending to be legally bound, pursuant to Section 252 of the Act, Frontier and Birch hereby agree as follows:

#### **1. The Agreement**

- 1.1 This Agreement includes: (a) the Principal Document; (b) the Tariffs of each Party applicable to the Services that are offered for sale by it in the Principal Document (which Tariffs are incorporated into and made a part of this Agreement by reference); and, (c) an Order by a Party that has been accepted by the other Party.
- 1.2 Except as otherwise expressly provided in the Principal Document (including, but not limited to, the Pricing Attachment), conflicts among provisions in the Principal Document, Tariffs, and an Order by a Party that has been accepted by the other Party, shall be resolved in accordance with the following order of precedence, where the document identified in subsection "(a)" shall have the highest precedence: (a) the Principal Document; (b) the Tariffs; and, (c) an Order by a Party that has been accepted by the other Party. The fact that a provision appears in the Principal Document but not in a Tariff, or in a Tariff but not in the Principal Document, shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section 1.2.
- 1.3 This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes any prior or contemporaneous agreement, understanding, or representation, on the subject matter hereof, provided, however, notwithstanding any other provision of this Agreement or otherwise, this Agreement is an amendment, extension and restatement of the Parties' prior interconnection and resale agreement(s), if any, and, as such, this Agreement is not intended to be, nor shall it be construed to create, a novation or accord and satisfaction with respect to any prior interconnection or resale agreements and, accordingly, all monetary obligations of the Parties to one another under any prior interconnection or resale agreements shall remain in full force and effect and shall constitute monetary obligations of the Parties under this Agreement (provided, however, that nothing contained in this Agreement shall convert any claim or debt that would otherwise constitute a prepetition claim or debt in a bankruptcy case into a postpetition claim or debt). In connection with the foregoing, Frontier expressly reserves all of its rights under the Bankruptcy Code and Applicable Law to seek or oppose any relief in respect of the assumption, assumption and assignment, or rejection of any interconnection or resale agreements between Frontier and Birch.

- 1.4 Except as otherwise provided in the Principal Document, the Principal Document may not be waived or modified except by a written document that is signed by the Parties. Subject to the requirements of Applicable Law, a Party shall have the right to add, modify, or withdraw, its Tariff(s) at any time, without the consent of, or notice to, the other Party.

## **2. Term and Termination**

- 2.1 This Agreement shall be effective as of the Effective Date and, unless cancelled or terminated earlier in accordance with the terms hereof, shall continue in effect until December 31, 2012 (the "Initial Term"). Thereafter, this Agreement shall continue in force and effect unless and until cancelled or terminated as provided in this Agreement.
- 2.2 Either Birch or Frontier may terminate this Agreement effective upon the expiration of the Initial Term or effective upon any date after expiration of the Initial Term by providing written notice of termination at least ninety (90) days in advance of the date of termination.
- 2.3 If either Birch or Frontier provides notice of termination pursuant to Section 2.2 and on or before the proposed date of termination either Birch or Frontier has requested negotiation of a new interconnection agreement, unless this Agreement is cancelled or terminated earlier in accordance with the terms hereof (including, but not limited to, pursuant to Section 12), this Agreement shall remain in effect until the earlier of: (a) the effective date of a new interconnection agreement between Birch and Frontier; or, (b) the date one (1) year after the proposed date of termination.
- 2.4 If either Birch or Frontier provides notice of termination pursuant to Section 2.2 and by 11:59 PM Eastern Time on the proposed date of termination neither Birch nor Frontier has requested negotiation of a new interconnection agreement, (a) this Agreement will terminate at 11:59 PM Eastern Time on the proposed date of termination, and (b) the Services being provided under this Agreement at the time of termination will be terminated, except to the extent that the Purchasing Party has requested that such Services continue to be provided pursuant to an applicable Tariff or Statement of Generally Available Terms (SGAT).

## **3. Glossary and Attachments**

The Glossary and the following Attachments are a part of this Agreement:

Additional Services Attachment  
Interconnection Attachment  
Resale Attachment  
Network Elements Attachment  
Collocation Attachment  
911 Attachment  
Pricing Attachment

## **4. Applicable Law**

- 4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the

State of South Carolina, without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.

- 4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.
- 4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.
- 4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.
- 4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law.
- 4.6 If any legislative, regulatory, judicial or other governmental decision, order, determination or action, or any change in Applicable Law, materially affects any material provision of this Agreement, the rights or obligations of a Party hereunder, or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to make such mutually acceptable revisions to this Agreement as may be required in order to conform the Agreement to Applicable Law. If within thirty (30) days of the effective date of such decision, determination, action or change, the Parties are unable to agree in writing upon mutually acceptable revisions to this Agreement, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction, without first pursuing dispute resolution in accordance with Section 14 of this Agreement.
  - 4.6.1 Notwithstanding Section 4.6 above, to the extent Frontier is required by a change in Applicable Law to provide to Birch a Service that is not offered under this Agreement to Birch, the terms, conditions and prices for such Service (including, but not limited to, the terms and conditions defining the Service and stating when and where the Service will be available and how it will be used, and terms, conditions and prices for pre-ordering, ordering, provisioning, repair, maintenance and billing) shall be as provided in an applicable Frontier Tariff, or, in the absence of an applicable Frontier Tariff, as mutually agreed by the Parties in a written amendment to the Agreement that, upon the request of either Party, the Parties shall negotiate in accordance with the requirements of Section 252 of the Act. In no event shall Frontier be required to provide any such Service in the absence of such a Frontier Tariff or amendment.

- 4.7 Notwithstanding anything in this Agreement to the contrary, if, as a result of any legislative, judicial, regulatory or other governmental decision, order, determination or action, or any change in Applicable Law, Frontier is not required by Applicable Law to provide any Service, payment or benefit, otherwise required to be provided to Birch hereunder, then Frontier may discontinue the provision of any such Service, payment or benefit, and Birch shall reimburse Frontier for any payment previously made by Frontier to Birch that was not required by Applicable Law. Frontier will provide thirty (30) days prior written notice to Birch of any such discontinuance of a Service, unless a different notice period or different conditions are specified in this Agreement (including, but not limited to, in the Networks Element Attachment or an applicable Tariff) or Applicable Law for termination of such Service in which event such specified period and/or conditions shall apply. For the avoidance of any doubt, this Section 4.7 is self-effectuating and no amendment to this Agreement shall be required to implement it.

**5. Assignment**

Neither Party may assign this Agreement or any right or interest under this Agreement, nor delegate any obligation under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted assignment or delegation in violation of this Section 5 shall be void and ineffective and constitute default of this Agreement.

**6. Assurance of Payment**

- 6.1 Upon request by Frontier, Birch shall, at any time and from time to time, provide to Frontier adequate assurance of payment of amounts due (or to become due) to Frontier hereunder.
- 6.2 Assurance of payment of charges may be requested by Frontier if Birch (a) prior to the Effective Date, has failed to timely pay a bill rendered to Birch by Frontier or its Affiliates, (b) on or after the Effective Date, fails to timely pay a bill rendered to Birch by Frontier or its Affiliates, (c) in Frontier's reasonable judgment, at the Effective Date or at any time thereafter, is unable to demonstrate that it is creditworthy, or (d) admits its inability to pay its debts as such debts become due, has commenced a voluntary case (or has had a case commenced against it) under the U.S. Bankruptcy Code or any other law relating to bankruptcy, insolvency, reorganization, winding-up, composition or adjustment of debts or the like, has made an assignment for the benefit of creditors or is subject to a receivership or similar proceeding.
- 6.3 Unless otherwise agreed by the Parties, the assurance of payment shall consist of an unconditional, irrevocable standby letter of credit naming Frontier as the beneficiary thereof and otherwise in form and substance satisfactory to Frontier from a financial institution acceptable to Frontier. The letter of credit shall be in an amount equal to two (2) months anticipated charges (including, but not limited to, both recurring and non-recurring charges), as reasonably determined by Frontier, for the Services to be provided by Frontier to Birch in connection with this Agreement. If Birch meets the condition in subsection 6.2(d) above or has failed to timely pay two or more bills rendered by Frontier or a Frontier Affiliate in any twelve (12)-month period, Frontier may, at its option, demand (and Birch shall provide) additional assurance of payment, consisting of monthly advanced payments of estimated charges as reasonably determined by Frontier, with appropriate true-up against actual billed charges no more frequently than once per Calendar Quarter.

- 6.4 [Intentionally Left Blank].
- 6.5 [Intentionally Left Blank].
- 6.6 Frontier may (but is not obligated to) draw on the letter of credit upon notice to Birch in respect of any amounts to be paid by Birch hereunder that are not paid within thirty (30) days of the date that payment of such amounts is required by this Agreement.
- 6.7 If Frontier draws on the letter of credit, upon request by Frontier, Birch shall provide a replacement or supplemental letter of credit conforming to the requirements of Section 6.3.
- 6.8 Notwithstanding anything else set forth in this Agreement, if Frontier makes a request for assurance of payment in accordance with the terms of this Section, then Frontier shall have no obligation thereafter to perform under this Agreement until such time as Birch has provided Frontier with such assurance of payment.
- 6.9 The fact that a letter of credit is requested by Frontier hereunder shall in no way relieve Birch from compliance with the requirements of this Agreement (including, but not limited to, any applicable Tariffs) as to advance payments and payment for Services, nor constitute a waiver or modification of the terms herein pertaining to the discontinuance of Services for nonpayment of any amounts payment of which is required by this Agreement.

## **7. Audits**

- 7.1 Except as may be otherwise specifically provided in this Agreement, either Party ("Auditing Party") may audit the other Party's ("Audited Party") books, records, documents, facilities and systems for the purpose of evaluating the accuracy of the Audited Party's bills. Such audits may be performed once in each Calendar Year; provided, however, that audits may be conducted more frequently (but no more frequently than once in each Calendar Quarter) if the immediately preceding audit found previously uncorrected net inaccuracies in billing in favor of the Audited Party having an aggregate value of at least \$1,000,000.
- 7.2 The audit shall be performed by independent certified public accountants selected and paid by the Auditing Party. The accountants shall be reasonably acceptable to the Audited Party. Prior to commencing the audit, the accountants shall execute an agreement with the Audited Party in a form reasonably acceptable to the Audited Party that protects the confidentiality of the information disclosed by the Audited Party to the accountants. The audit shall take place at a time and place agreed upon by the Parties; provided, that the Auditing Party may require that the audit commence no later than sixty (60) days after the Auditing Party has given notice of the audit to the Audited Party.
- 7.3 Each Party shall cooperate fully in any such audit, providing reasonable access to any and all employees, books, records, documents, facilities and systems, reasonably necessary to assess the accuracy of the Audited Party's bills.
- 7.4 Audits shall be performed at the Auditing Party's expense, provided that there shall be no charge for reasonable access to the Audited Party's employees, books, records, documents, facilities and systems necessary to assess the accuracy of the Audited Party's bills.

## **8. Authorization**

- 8.1 Frontier represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Virginia and has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 8.2 Birch represents and warrants that it is a corporation duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky, and has full power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement.
- 8.3 Birch Certification.

Notwithstanding any other provision of this Agreement, Frontier shall have no obligation to perform under this Agreement until such time as Birch has obtained such FCC and Commission authorization as may be required by Applicable Law for conducting business in the State of South Carolina. Birch shall not place any Orders under this Agreement until it has obtained such authorization. Birch shall provide proof of such authorization to Frontier upon request.

## **9. Billing and Payment; Disputed Amounts**

- 9.1 Except as otherwise provided in this Agreement, each Party shall submit to the other Party on a monthly basis in an itemized form, statement(s) of charges incurred by the other Party under this Agreement.
- 9.2 Except as otherwise provided in this Agreement, payment of amounts billed for Services provided under this Agreement, whether billed on a monthly basis or as otherwise provided in this Agreement, shall be due, in immediately available U.S. funds, on the later of the following dates (the "Due Date"): (a) the due date specified on the billing Party's statement; or (b) twenty (20) days after the date the statement is received by the billed Party. Payments shall be transmitted by electronic funds transfer.
- 9.3 If any portion of an amount billed by a Party under this Agreement is subject to a good faith dispute between the Parties, the billed Party shall give notice to the billing Party of the amounts it disputes ("Disputed Amounts") and include in such notice the specific details and reasons for disputing each item. A Party may also dispute prospectively with a single notice a class of charges that it disputes. Notice of a dispute may be given by a Party at any time, either before or after an amount is paid, and a Party's payment of an amount shall not constitute a waiver of such Party's right to subsequently dispute its obligation to pay such amount or to seek a refund of any amount paid. The billed Party shall pay by the Due Date all undisputed amounts. Billing disputes shall be subject to the terms of Section 14, Dispute Resolution.
- 9.4 Charges due to the billing Party that are not paid by the Due Date, shall be subject to a late payment charge. The late payment charge shall be in an amount specified by the billing Party which shall not exceed a rate of one-and-one-half percent (1.5%) of the overdue amount (including any unpaid previously billed late payment charges) per month.
- 9.5 Although it is the intent of both Parties to submit timely statements of charges, failure by either Party to present statements to the other Party in a timely manner shall not constitute a breach or default, or a waiver of the right to payment of the incurred charges, by the billing Party under this Agreement, and, except for assertion of a provision of Applicable Law that limits the period in which a suit or other proceeding can be brought before a court or other governmental entity of

appropriate jurisdiction to collect amounts due, the billed Party shall not be entitled to dispute the billing Party's statement(s) based on the billing Party's failure to submit them in a timely fashion.

## **10. Confidentiality**

- 10.1 As used in this Section 10, "Confidential Information" means the following information that is disclosed by one Party ("Disclosing Party") to the other Party ("Receiving Party") in connection with, or anticipation of, this Agreement:
- 10.1.1 Books, records, documents and other information disclosed in an audit pursuant to Section 7;
  - 10.1.2 Any forecasting information provided pursuant to this Agreement;
  - 10.1.3 Customer Information (except to the extent that (a) the Customer information is published in a directory, (b) the Customer information is disclosed through or in the course of furnishing a Telecommunications Service, such as directory assistance, operator service, Caller ID or similar service, or LIDB service, or (c) the Customer to whom the Customer Information is related has authorized the Receiving Party to use and/or disclose the Customer Information);
  - 10.1.4 information related to specific facilities or equipment (including, but not limited to, cable and pair information);
  - 10.1.5 any information that is in written, graphic, electromagnetic, or other tangible form, and marked at the time of disclosure as "Confidential" or "Proprietary"; and
  - 10.1.6 any information that is communicated orally or visually and declared to the Receiving Party at the time of disclosure, and by written notice with a statement of the information given to the Receiving Party within ten (10) days after disclosure, to be "Confidential" or "Proprietary".

Notwithstanding any other provision of this Agreement, a Party shall have the right to refuse to accept receipt of information which the other Party has identified as Confidential Information pursuant to Sections 10.1.5 or 10.1.6.

- 10.2 Except as otherwise provided in this Agreement, the Receiving Party shall:
- 10.2.1 use the Confidential Information received from the Disclosing Party only in performance of this Agreement; and
  - 10.2.2 using the same degree of care that it uses with similar confidential information of its own (but in no case a degree of care that is less than commercially reasonable), hold Confidential Information received from the Disclosing Party in confidence and restrict disclosure of the Confidential Information solely to those of the Receiving Party's Affiliates and the directors, officers, employees, Agents and contractors of the Receiving Party and the Receiving Party's Affiliates, that have a need to receive such Confidential Information in order to perform the Receiving Party's obligations under this Agreement. The Receiving Party's Affiliates and the directors, officers, employees, Agents and contractors of the Receiving Party and the Receiving Party's Affiliates, shall be required by the Receiving Party to comply with the provisions of this Section 10 in the same manner as the

Receiving Party. The Receiving Party shall be liable for any failure of the Receiving Party's Affiliates or the directors, officers, employees, Agents or contractors of the Receiving Party or the Receiving Party's Affiliates, to comply with the provisions of this Section 10.

- 10.3 The Receiving Party shall return or destroy all Confidential Information received from the Disclosing Party, including any copies made by the Receiving Party, within thirty (30) days after a written request by the Disclosing Party is delivered to the Receiving Party, except for (a) Confidential Information that the Receiving Party reasonably requires to perform its obligations under this Agreement, and (b) one copy for archival purposes only.
- 10.4 Unless otherwise agreed, the obligations of Sections 10.2 and 10.3 do not apply to information that:
- 10.4.1 was, at the time of receipt, already in the possession of or known to the Receiving Party free of any obligation of confidentiality and restriction on use;
  - 10.4.2 is or becomes publicly available or known through no wrongful act of the Receiving Party, the Receiving Party's Affiliates, or the directors, officers, employees, Agents or contractors of the Receiving Party or the Receiving Party's Affiliates;
  - 10.4.3 is rightfully received from a third person having no direct or indirect obligation of confidentiality or restriction on use to the Disclosing Party with respect to such information;
  - 10.4.4 is independently developed by the Receiving Party;
  - 10.4.5 is approved for disclosure or use by written authorization of the Disclosing Party (including, but not limited to, in this Agreement); or
  - 10.4.6 is required to be disclosed by the Receiving Party pursuant to Applicable Law, provided that the Receiving Party shall have made commercially reasonable efforts to give adequate notice of the requirement to the Disclosing Party in order to enable the Disclosing Party to seek protective arrangements.
- 10.5 Notwithstanding the provisions of Sections 10.1 through 10.4, the Receiving Party may use and disclose Confidential Information received from the Disclosing Party to the extent necessary to enforce the Receiving Party's rights under this Agreement or Applicable Law. In making any such disclosure, the Receiving Party shall make reasonable efforts to preserve the confidentiality and restrict the use of the Confidential Information while it is in the possession of any person to whom it is disclosed, including, but not limited to, by requesting any governmental entity to whom the Confidential Information is disclosed to treat it as confidential and restrict its use to purposes related to the proceeding pending before it.
- 10.6 The Disclosing Party shall retain all of the Disclosing Party's right, title and interest in any Confidential Information disclosed by the Disclosing Party to the Receiving Party. Except as otherwise expressly provided in this Agreement, no license is granted by this Agreement with respect to any Confidential Information (including, but not limited to, under any patent, trademark or copyright), nor is any such license to be implied solely by virtue of the disclosure of Confidential Information.



10.7 The provisions of this Section 10 shall be in addition to and not in derogation of any provisions of Applicable Law, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by a Party of any right with regard to the use, or protection of the confidentiality of, CPNI provided by Applicable Law.

10.8 Each Party's obligations under this Section 10 shall survive expiration, cancellation or termination of this Agreement.

#### **11. Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

#### **12. Default**

If either Party ("Defaulting Party") fails to make a payment required by this Agreement (including, but not limited to, any payment required by Section 9.3 of undisputed amounts to the billing Party) or materially breaches any other material provision of this Agreement, and such failure or breach continues for thirty (30) days after written notice thereof from the other Party, the other Party may, by written notice to the Defaulting Party, (a) suspend the provision of any or all Services hereunder, or (b) cancel this Agreement and terminate the provision of all Services hereunder.

#### **13. Discontinuance of Service by Birch**

13.1 If Birch proposes to discontinue, or actually discontinues, its provision of service to all or substantially all of its Customers, whether voluntarily, as a result of bankruptcy, or for any other reason, Birch shall send written notice of such discontinuance to Frontier, the Commission, and each of Birch's Customers. Birch shall provide such notice such number of days in advance of discontinuance of its service as shall be required by Applicable Law. Unless the period for advance notice of discontinuance of service required by Applicable Law is more than thirty (30) days, to the extent commercially feasible, Birch shall send such notice at least thirty (30) days prior to its discontinuance of service.

13.2 Such notice must advise each Birch Customer that unless action is taken by the Birch Customer to switch to a different carrier prior to Birch's proposed discontinuance of service, the Birch Customer will be without the service provided by Birch to the Birch Customer.

13.3 Should a Birch Customer subsequently become a Frontier Customer, Birch shall provide Frontier with all information necessary for Frontier to establish service for the Birch Customer, including, but not limited to, the Birch Customer's billed name, listed name, service address, and billing address, and the services being provided to the Birch Customer.

13.4 Nothing in this Section 13 shall limit Frontier's right to cancel or terminate this Agreement or suspend provision of Services under this Agreement.

#### **14. Dispute Resolution**

14.1 Except as otherwise provided in this Agreement, any dispute between the Parties regarding the interpretation or enforcement of this Agreement or any of its terms shall be addressed by good faith negotiation between the Parties. To initiate such negotiation, a Party must provide to the other Party written notice of the dispute that includes both a detailed description of the dispute or alleged

nonperformance and the name of an individual who will serve as the initiating Party's representative in the negotiation. The other Party shall have ten Business Days to designate its own representative in the negotiation. The Parties' representatives shall meet at least once within 45 days after the date of the initiating Party's written notice in an attempt to reach a good faith resolution of the dispute. Upon agreement, the Parties' representatives may utilize other alternative dispute resolution procedures such as private mediation to assist in the negotiations.

- 14.2 If the Parties have been unable to resolve the dispute within 45 days of the date of the initiating Party's written notice, either Party may pursue any remedies available to it under this Agreement, at law, in equity, or otherwise, including, but not limited to, instituting an appropriate proceeding before the Commission, the FCC, or a court of competent jurisdiction.

## **15. Force Majeure**

- 15.1 Neither Party shall be responsible for any delay or failure in performance which results from causes beyond its reasonable control ("Force Majeure Events"), whether or not foreseeable by such Party. Such Force Majeure Events include, but are not limited to, adverse weather conditions, flood, fire, explosion, earthquake, volcanic action, power failure, embargo, boycott, war, revolution, civil commotion, act of public enemies, labor unrest (including, but not limited to, strikes, work stoppages, slowdowns, picketing or boycotts), inability to obtain equipment, parts, software or repairs thereof, acts or omissions of the other Party, and acts of God.
- 15.2 If a Force Majeure Event occurs, the non-performing Party shall give prompt notification of its inability to perform to the other Party. During the period that the non-performing Party is unable to perform, the other Party shall also be excused from performance of its obligations to the extent such obligations are reciprocal to, or depend upon, the performance of the non-performing Party that has been prevented by the Force Majeure Event. The non-performing Party shall use commercially reasonable efforts to avoid or remove the cause(s) of its non-performance and both Parties shall proceed to perform once the cause(s) are removed or cease.
- 15.3 Notwithstanding the provisions of Sections 15.1 and 15.2, in no case shall a Force Majeure Event excuse either Party from an obligation to pay money as required by this Agreement.
- 15.4 Nothing in this Agreement shall require the non-performing Party to settle any labor dispute except as the non-performing Party, in its sole discretion, determines appropriate.

## **16. Forecasts**

In addition to any other forecasts required by this Agreement, upon request by Frontier, Birch shall provide to Frontier forecasts regarding the Services that Birch expects to purchase from Frontier, including, but not limited to, forecasts regarding the types and volumes of Services that Birch expects to purchase and the locations where such Services will be purchased.

## **17. Fraud**

Birch assumes responsibility for all fraud associated with its Customers and accounts. Frontier shall bear no responsibility for, and shall have no obligation to investigate or

make adjustments to Birch's account in cases of, fraud by Birch's Customers or other third parties.

**18. Good Faith Performance**

The Parties shall act in good faith in their performance of this Agreement. Except as otherwise expressly stated in this Agreement (including, but not limited to, where consent, approval, agreement or a similar action is stated to be within a Party's sole discretion), where consent, approval, mutual agreement or a similar action is required by any provision of this Agreement, such action shall not be unreasonably withheld, conditioned or delayed. If and, to the extent that, Frontier, prior to the Effective Date of this Agreement, has not provided in the State of South Carolina a Service offered under this Agreement, Frontier reserves the right to negotiate in good faith with Birch reasonable terms and conditions (including, without limitation, rates and implementation timeframes) for such Service; and, if the Parties cannot agree to such terms and conditions (including, without limitation, rates and implementation timeframes), either Party may utilize the Agreement's dispute resolution procedures.

**19. Headings**

The headings used in the Principal Document are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning of the Principal Document.

**20. Indemnification**

20.1 Each Party ("Indemnifying Party") shall indemnify, defend and hold harmless the other Party ("Indemnified Party"), the Indemnified Party's Affiliates, and the directors, officers and employees of the Indemnified Party and the Indemnified Party's Affiliates, from and against any and all Claims that arise out of bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, to the extent such injury, death, damage, destruction or loss, was proximately caused by the grossly negligent or intentionally wrongful acts or omissions of the Indemnifying Party, the Indemnifying Party's Affiliates, or the directors, officers, employees, Agents or contractors (excluding the Indemnified Party) of the Indemnifying Party or the Indemnifying Party's Affiliates, in connection with this Agreement.

**20.2 Indemnification Process.**

- 20.2.1 As used in this Section 20, "Indemnified Person" means a person whom an Indemnifying Party is obligated to indemnify, defend and/or hold harmless under Section 20.1.
- 20.2.2 An Indemnifying Party's obligations under Section 20.1 shall be conditioned upon the following:
- 20.2.3 The Indemnified Person: (a) shall give the Indemnifying Party notice of the Claim promptly after becoming aware thereof (including a statement of facts known to the Indemnified Person related to the Claim and an estimate of the amount thereof); (b) prior to taking any material action with respect to a Third Party Claim, shall consult with the Indemnifying Party as to the procedure to be followed in defending, settling, or compromising the Claim; (c) shall not consent to any settlement or compromise of a Third Party Claim without the written consent of the Indemnifying Party; (d) shall permit the Indemnifying Party to assume the defense of a Third Party Claim (including, except

as provided below, the compromise or settlement thereof) at the Indemnifying Party's own cost and expense, provided, however, that the Indemnified Person shall have the right to approve the Indemnifying Party's choice of legal counsel.

- 20.2.4 If the Indemnified Person fails to comply with Section 20.2.3 with respect to a Claim, to the extent such failure shall have a material adverse effect upon the Indemnifying Party, the Indemnifying Party shall be relieved of its obligation to indemnify, defend and hold harmless the Indemnified Person with respect to such Claim under this Agreement.
- 20.2.5 Subject to 20.2.6 and 20.2.7, below, the Indemnifying Party shall have the authority to defend and settle any Third Party Claim.
- 20.2.6 With respect to any Third Party Claim, the Indemnified Person shall be entitled to participate with the Indemnifying Party in the defense of the Claim if the Claim requests equitable relief or other relief that could affect the rights of the Indemnified Person. In so participating, the Indemnified Person shall be entitled to employ separate counsel for the defense at the Indemnified Person's expense. The Indemnified Person shall also be entitled to participate, at its own expense, in the defense of any Claim, as to any portion of the Claim as to which it is not entitled to be indemnified, defended and held harmless by the Indemnifying Party.
- 20.2.7 In no event shall the Indemnifying Party settle a Third Party Claim or consent to any judgment with regard to a Third Party Claim without the prior written consent of the Indemnified Party, which shall not be unreasonably withheld, conditioned or delayed. In the event the settlement or judgment requires a contribution from or affects the rights of an Indemnified Person, the Indemnified Person shall have the right to refuse such settlement or judgment with respect to itself and, at its own cost and expense, take over the defense against the Third Party Claim, provided that in such event the Indemnifying Party shall not be responsible for, nor shall it be obligated to indemnify or hold harmless the Indemnified Person against, the Third Party Claim for any amount in excess of such refused settlement or judgment.
- 20.2.8 The Indemnified Person shall, in all cases, assert any and all provisions in applicable Tariffs and Customer contracts that limit liability to third persons as a bar to, or limitation on, any recovery by a third-person claimant.
- 20.2.9 The Indemnifying Party and the Indemnified Person shall offer each other all reasonable cooperation and assistance in the defense of any Third Party Claim.
- 20.3 Each Party agrees that it will not implead or bring any action against the other Party, the other Party's Affiliates, or any of the directors, officers or employees of the other Party or the other Party's Affiliates, based on any claim by any person for personal injury or death that occurs in the course or scope of employment of such person by the other Party or the other Party's Affiliate and that arises out of performance of this Agreement.
- 20.4 Each Party's obligations under this Section 20 shall survive expiration, cancellation or termination of this Agreement.

## 21. Insurance

- 21.1 Birch shall maintain during the term of this Agreement and for a period of two years thereafter all insurance required to satisfy its obligations under this Agreement (including, but not limited to, its obligations set forth in Section 20 hereof) and all insurance required by Applicable Law. The insurance shall be obtained from an insurer having an A.M. Best insurance rating of at least A-, financial size category VII or greater. At a minimum and without limiting the foregoing undertaking, Birch shall maintain the following insurance:
  - 21.1.1 Commercial General Liability Insurance, on an occurrence basis, including but not limited to, premises-operations, broad form property damage, products/completed operations, contractual liability, independent contractors, and personal injury, with limits of at least \$2,000,000 combined single limit for each occurrence.
  - 21.1.2 Commercial Motor Vehicle Liability Insurance covering all owned, hired and non-owned vehicles, with limits of at least \$2,000,000 combined single limit for each occurrence.
  - 21.1.3 Excess Liability Insurance, in the umbrella form, with limits of at least \$10,000,000 combined single limit for each occurrence.
  - 21.1.4 Worker's Compensation Insurance as required by Applicable Law and Employer's Liability Insurance with limits of not less than \$2,000,000 per occurrence.
  - 21.1.5 All risk property insurance on a full replacement cost basis for all of Birch's real and personal property located at any Collocation site or otherwise located on or in any Frontier premises (whether owned, leased or otherwise occupied by Frontier), facility, equipment or right-of-way.
- 21.2 Any deductibles, self-insured retentions or loss limits ("Retentions") for the foregoing insurance must be disclosed on the certificates of insurance to be provided to Frontier pursuant to Sections 21.4 and 21.5, and Frontier reserves the right to reject any such Retentions in its reasonable discretion. All Retentions shall be the responsibility of Birch.
- 21.3 Birch shall name Frontier and Frontier's Affiliates as additional insureds on the foregoing liability insurance.
- 21.4 Birch shall, within two (2) weeks of the Effective Date hereof at the time of each renewal of, or material change in, Birch's insurance policies, and at such other times as Frontier may reasonably specify, furnish certificates or other proof of the foregoing insurance reasonably acceptable to Frontier. The certificates or other proof of the foregoing insurance shall be sent to: Director-Carrier Services, Frontier Communications, 180 S. Clinton, Rochester, NY 14646.
- 21.5 Birch shall require its contractors, if any, that may enter upon the premises or access the facilities or equipment of Frontier or Frontier's affiliates to maintain insurance in accordance with Sections 21.1 through 21.3 and, if requested, to furnish Frontier certificates or other adequate proof of such insurance acceptable to Frontier in accordance with Section 21.4.

- 21.6 Failure of Birch or Birch's contractors to maintain insurance and provide certificates of insurance as required in Sections 21.1 through 21.5, above, shall be deemed a material breach of this Agreement.
- 21.7 Certificates furnished by Birch or Birch's contractors shall contain a clause stating: "Frontier OF THE CAROLINAS INC. shall be notified in writing at least thirty (30) days prior to cancellation of, or any material change in, the insurance."

## **22. Intellectual Property**

- 22.1 Except as expressly stated in this Agreement, this Agreement shall not be construed as granting a license with respect to any patent, copyright, trade name, trademark, service mark, trade secret or any other intellectual property, now or hereafter owned, controlled or licensable by either Party. Except as expressly stated in this Agreement, neither Party may use any patent, copyrightable materials, trademark, trade name, trade secret or other intellectual property right, of the other Party except in accordance with the terms of a separate license agreement between the Parties granting such rights.
- 22.2 Except as stated in Section 22.4, neither Party shall have any obligation to defend, indemnify or hold harmless, or acquire any license or right for the benefit of, or owe any other obligation or have any liability to, the other Party or its Affiliates or Customers based on or arising from any Third Party Claim alleging or asserting that the provision or use of any service, facility, arrangement, or software by either Party under this Agreement, or the performance of any service or method, either alone or in combination with the other Party, constitutes direct, vicarious or contributory infringement or inducement to infringe, or misuse or misappropriation of any patent, copyright, trademark, trade secret, or any other proprietary or intellectual property right of any Party or third person. Each Party, however, shall offer to the other reasonable cooperation and assistance in the defense of any such claim.
- 22.3 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE PARTIES AGREE THAT NEITHER PARTY HAS MADE, AND THAT THERE DOES NOT EXIST, ANY WARRANTY, EXPRESS OR IMPLIED, THAT THE USE BY EACH PARTY OF THE OTHER'S SERVICES PROVIDED UNDER THIS AGREEMENT SHALL NOT GIVE RISE TO A CLAIM OF INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF ANY INTELLECTUAL PROPERTY RIGHT.
- 22.4 Birch agrees that the Services provided by Frontier hereunder shall be subject to the terms, conditions and restrictions contained in any applicable agreements (including, but not limited to software or other intellectual property license agreements) between Frontier and Frontier's vendors. Frontier agrees to advise Birch, directly or through a third party, of any such terms, conditions or restrictions that may limit any Birch use of a Service provided by Frontier that is otherwise permitted by this Agreement. At Birch's written request, to the extent required by Applicable Law, Frontier will use Frontier's best efforts, as commercially practicable, to obtain intellectual property rights from Frontier's vendor to allow Birch to use the Service in the same manner as Frontier that are coextensive with Frontier's intellectual property rights, on terms and conditions that are equal in quality to the terms and conditions under which Frontier has obtained Frontier's intellectual property rights. Birch shall reimburse Frontier for the cost of obtaining such rights.

## **23. Joint Work Product**

The Principal Document is the joint work product of the Parties, has been negotiated by the Parties, and shall be fairly interpreted in accordance with its terms. In the event of any ambiguities, no inferences shall be drawn against either Party.

#### **24. Law Enforcement**

- 24.1 Each Party may cooperate with law enforcement authorities and national security authorities to the full extent required or permitted by Applicable Law in matters related to Services provided by it under this Agreement, including, but not limited to, the production of records, the establishment of new lines or the installation of new services on an existing line in order to support law enforcement and/or national security operations, and, the installation of wiretaps, trap-and-trace facilities and equipment, and dialed number recording facilities and equipment.
- 24.2 A Party shall not have the obligation to inform the other Party or the Customers of the other Party of actions taken in cooperating with law enforcement or national security authorities, except to the extent required by Applicable Law.
- 24.3 Where a law enforcement or national security request relates to the establishment of lines (including, but not limited to, lines established to support interception of communications on other lines), or the installation of other services, facilities or arrangements, a Party may act to prevent the other Party from obtaining access to information concerning such lines, services, facilities and arrangements, through operations support system interfaces.

#### **25. Liability**

- 25.1 As used in this Section 25, "Service Failure" means a failure to comply with a direction to install, restore or terminate Services under this Agreement, a failure to provide Services under this Agreement, and failures, mistakes, omissions, interruptions, delays, errors, defects or the like, occurring in the course of the provision of any Services under this Agreement.
- 25.2 Except as otherwise stated in Section 25.5, the liability, if any, of a Party, a Party's Affiliates, and the directors, officers and employees of a Party and a Party's Affiliates, to the other Party, the other Party's Customers, and to any other person, for Claims arising out of a Service Failure shall not exceed an amount equal to the pro rata applicable monthly charge for the Services that are subject to the Service Failure for the period in which such Service Failure occurs.
- 25.3 Except as otherwise stated in Section 25.5, a Party, a Party's Affiliates, and the directors, officers and employees of a Party and a Party's Affiliates, shall not be liable to the other Party, the other Party's Customers, or to any other person, in connection with this Agreement (including, but not limited to, in connection with a Service Failure or any breach, delay or failure in performance, of this Agreement) for special, indirect, incidental, consequential, reliance, exemplary, punitive, or like damages, including, but not limited to, damages for lost revenues, profits or savings, or other commercial or economic loss, even if the person whose liability is excluded by this Section has been advised of the possibility of such damages.
- 25.4 The limitations and exclusions of liability stated in Sections 25.1 through 25.3 shall apply regardless of the form of a claim or action, whether statutory, in contract, warranty, strict liability, tort (including, but not limited to, negligence of a Party), or otherwise.
- 25.5 Nothing contained in Sections 25.1 through 25.4 shall exclude or limit liability:

- 25.5.1 under Sections 20, Indemnification, or 41, Taxes.
- 25.5.2 for any obligation to indemnify, defend and/or hold harmless that a Party may have under this Agreement.
- 25.5.3 for damages arising out of or resulting from bodily injury to or death of any person, or damage to, or destruction or loss of, tangible real and/or personal property of any person, or Toxic or Hazardous Substances, to the extent such damages are otherwise recoverable under Applicable Law;
- 25.5.4 for a claim for infringement of any patent, copyright, trade name, trade mark, service mark, or other intellectual property interest;
- 25.5.5 under Section 258 of the Act or any order of FCC or the Commission implementing Section 258; or
- 25.5.6 under the financial incentive or remedy provisions of any service quality plan required by the FCC or the Commission.
- 25.6 In the event that the liability of a Party, a Party's Affiliate, or a director, officer or employee of a Party or a Party's Affiliate, is limited and/or excluded under both this Section 25 and a provision of an applicable Tariff, the liability of the Party or other person shall be limited to the smaller of the amounts for which such Party or other person would be liable under this Section or the Tariff provision.
- 25.7 Each Party shall, in its tariffs and other contracts with its Customers, provide that in no case shall the other Party, the other Party's Affiliates, or the directors, officers or employees of the other Party or the other Party's Affiliates, be liable to such Customers or other third-persons for any special, indirect, incidental, consequential, reliance, exemplary, punitive or other damages, arising out of a Service Failure.

## 26. Network Management

- 26.1 Cooperation. The Parties will work cooperatively in a commercially reasonable manner to install and maintain a reliable network. Birch and Frontier will exchange appropriate information (e.g., network information, maintenance contact numbers, escalation procedures, and information required to comply with requirements of law enforcement and national security agencies) to achieve this desired reliability. In addition, the Parties will work cooperatively in a commercially reasonable manner to apply sound network management principles to alleviate or to prevent traffic congestion and subject to Section 17, to minimize fraud associated with third number billed calls, calling card calls, and other services related to this Agreement.
- 26.2 Responsibility for Following Standards. Each Party recognizes a responsibility to follow the standards that may be agreed to between the Parties and to employ characteristics and methods of operation that will not interfere with or impair the service, network or facilities of the other Party or any third parties connected with or involved directly in the network or facilities of the other.
- 26.3 Interference or Impairment. If a Party ("Impaired Party") reasonably determines that the services, network, facilities, or methods of operation, of the other Party ("Interfering Party") will or are likely to interfere with or impair the Impaired Party's provision of services or the operation of the Impaired Party's network or facilities, the Impaired Party may interrupt or suspend any Service provided to the



Interfering Party to the extent necessary to prevent such interference or impairment, subject to the following:

26.3.1 Except in emergency situations (e.g., situations involving a risk of bodily injury to persons or damage to tangible property, or an interruption in Customer service) or as otherwise provided in this Agreement, the Impaired Party shall have given the Interfering Party at least ten (10) days' prior written notice of the interference or impairment or potential interference or impairment and the need to correct the condition within said time period; and taken other actions, if any, required by Applicable Law; and,

26.3.2 Upon correction of the interference or impairment, the Impaired Party will promptly restore the interrupted or suspended Service. The Impaired Party shall not be obligated to provide an out-of-service credit allowance or other compensation to the Interfering Party in connection with the suspended Service.

26.4 Outage Repair Standard. In the event of an outage or trouble in any Service being provided by a Party hereunder, the Providing Party will follow Frontier's standard procedures for isolating and clearing the outage or trouble.

## **27. Non-Exclusive Remedies**

Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any other remedies that may be available under this Agreement or at law or in equity.

## **28. Notice of Network Changes**

If a Party makes a change in the information necessary for the transmission and routing of services using that Party's facilities or network, or any other change in its facilities or network that will materially affect the interoperability of its facilities or network with the other Party's facilities or network, the Party making the change shall publish notice of the change at least ninety (90) days in advance of such change, and shall use reasonable efforts, as commercially practicable, to publish such notice at least one hundred eighty (180) days in advance of the change; provided, however, that if an earlier publication of notice of a change is required by Applicable Law (including, but not limited to, 47 CFR 51.325 through 51.335) notice shall be given at the time required by Applicable Law.

## **29. Notices**

29.1 Except as otherwise provided in this Agreement, notices given by one Party to the other Party under this Agreement:

29.1.1 shall be in writing;

29.1.2 shall be delivered (a) personally, (b) by express delivery service with next Business Day delivery, (c) by first class, certified or registered U.S. mail, postage prepaid, or (d) by facsimile telecopy, with a copy delivered in accordance with (a), (b) or (c), preceding; and

29.1.3 shall be delivered to the following addresses of the Parties:

To Birch:

Chris Bunce  
VP, Legal/General Counsel  
Birch Communications  
2300 Main Street, Ste 600  
Kansas City, MO 64108  
Telephone Number: 816-300-3322  
Facsimile Number: 816-300-3350  
Internet Address: [chris.bunce@birch.com](mailto:chris.bunce@birch.com)

With a copy to:

Sharyl D. Fowler  
Manager, Legal & Regulatory  
Birch Communications  
4885 Riverside Drive, Ste 304  
Macon, GA 31210  
Telephone Number: 478-476-1165  
Internet Address: [sharyl.fowler@birch.com](mailto:sharyl.fowler@birch.com)

To Frontier:

Director-Carrier Service  
Frontier Communications  
180 S. Clinton Ave.  
Rochester, NY 14646  
Telephone (585) 777-7124

with a copy to:

Attn: Associate General Counsel  
Frontier Communications  
180 S. Clinton Ave., 7<sup>th</sup> Floor  
Rochester, NY 14646

or to such other address as either Party shall designate by proper notice.

Notices will be deemed given as of the earlier of (a) where there is personal delivery of the notice, the date of actual receipt, (b) where the notice is sent via express delivery service for next Business Day delivery, the next Business Day after the notice is sent, (c) where the notice is sent via First Class U.S. Mail, three (3) Business Days after mailing, (d) where notice is sent via certified or registered U.S. mail, the date of receipt shown on the Postal Service receipt, and (e) where the notice is sent via facsimile telecopy, if the notice is sent on a Business Day and before 5 PM. in the time zone where it is received, on the date set forth on the telecopy confirmation, or if the notice is sent on a non-Business Day or if the notice is sent after 5 PM in the time zone where it is received, the next Business Day after the date set forth on the telecopy confirmation.

Birch shall notify Frontier, by written notice pursuant to this Section 29, of any changes in the addresses or other Birch contact information identified under Section 29.1.3 above.

### **30. Ordering and Maintenance**

Birch shall use Frontier's electronic Operations Support System access platforms to submit Orders and requests for maintenance and repair of Services, and to engage in other pre-ordering, ordering, provisioning, maintenance and repair transactions. If

Frontier has not yet deployed an electronic capability for Birch to perform a pre-ordering, ordering, provisioning, maintenance or repair, transaction offered by Frontier, Birch shall use such other processes as Frontier has made available for performing such transaction (including, but not limited, to submission of Orders by telephonic facsimile transmission and placing trouble reports by voice telephone transmission).

**31. Performance Standards**

- 31.1 Frontier shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law, including, but not limited to, Section 251(c) of the Act.
- 31.2 Birch shall provide Services under this Agreement in accordance with the performance standards required by Applicable Law.

**32. Point of Contact for Birch Customers**

- 32.1 Birch shall establish telephone numbers and mailing addresses at which Birch Customers may communicate with Birch and shall advise Birch Customers of these telephone numbers and mailing addresses.
- 32.2 Except as otherwise agreed to by Frontier, Frontier shall have no obligation, and may decline, to accept a communication from a Birch Customer, including, but not limited to, a Birch Customer request for repair or maintenance of a Frontier Service provided to Birch.

**33. Predecessor Agreements**

- 33.1 Except as stated in Section 33.2 or as otherwise agreed in writing by the Parties:
  - 33.1.1 Further to the provisions of Section 1 of the General Terms and Conditions of this Agreement, any prior interconnection or resale agreement between the Parties for the State of South Carolina pursuant to Section 252 of the Act and in effect prior to the Effective Date is hereby amended, extended and restated; and
  - 33.1.2 any Services that were purchased by one Party from the other Party under a prior interconnection or resale agreement between the Parties for the State of South Carolina pursuant to Section 252 of the Act and in effect prior to the Effective Date, shall as of the Effective Date be subject to and purchased under this Agreement.
- 33.2 Except as otherwise agreed in writing by the Parties, if a Service purchased by a Party under a prior interconnection or resale agreement between the Parties pursuant to Section 252 of the Act was subject to a contractual commitment that it would be purchased for a period of longer than one month, and such period had not yet expired as of the Effective Date and the Service had not been terminated prior to the Effective Date, to the extent not inconsistent with this Agreement, such commitment shall remain in effect and the Service will be purchased under this Agreement; provided, that if this Agreement would materially alter the terms of the commitment, either Party may elect to cancel the commitment.
- 33.3 If either Party elects to cancel the commitment pursuant to the proviso in Section 33.2, the Purchasing Party shall not be liable for any termination charge that would otherwise have applied. However, if the commitment was cancelled by the Purchasing Party, the Providing Party shall be entitled to payment from the

Purchasing Party of the difference between the price of the Service that was actually paid by the Purchasing Party under the commitment and the price of the Service that would have applied if the commitment had been to purchase the Service only until the time that the commitment was cancelled.

**34. Publicity and Use of Trademarks or Service Marks**

- 34.1 A Party, its Affiliates, and their respective contractors and Agents, shall not use the other Party's trademarks, service marks, logos or other proprietary trade dress, in connection with the sale of products or services, or in any advertising, press releases, publicity matters or other promotional materials, unless the other Party has given its written consent for such use, which consent the other Party may grant or withhold in its sole discretion.
- 34.2 Neither Party may imply any direct or indirect affiliation with or sponsorship or endorsement of it or its services or products by the other Party.
- 34.3 Any violation of this Section 34 shall be considered a material breach of this Agreement.

**35. References**

- 35.1 All references to Sections, Appendices and Exhibits shall be deemed to be references to Sections, Appendices and Exhibits of this Agreement unless the context shall otherwise require.
- 35.2 Unless the context shall otherwise require, any reference to a Tariff, agreement, technical or other document (including Frontier or third party guides, practices or handbooks), or provision of Applicable Law, is to such Tariff, agreement, document, or provision of Applicable Law, as amended and supplemented from time to time (and, in the case of a Tariff or provision of Applicable Law, to any successor Tariff or provision).

**36. Relationship of the Parties**

- 36.1 The relationship of the Parties under this Agreement shall be that of independent contractors and nothing herein shall be construed as creating any other relationship between the Parties.
- 36.2 Nothing contained in this Agreement shall make either Party the employee of the other, create a partnership, joint venture, or other similar relationship between the Parties, or grant to either Party a franchise, distributorship or similar interest.
- 36.3 Except for provisions herein expressly authorizing a Party to act for another Party, nothing in this Agreement shall constitute a Party as a legal representative or Agent of the other Party, nor shall a Party have the right or authority to assume, create or incur any liability or any obligation of any kind, express or implied, against, in the name or on behalf of the other Party unless otherwise expressly permitted by such other Party in writing, which permission may be granted or withheld by the other Party in its sole discretion.
- 36.4 Each Party shall have sole authority and responsibility to hire, fire, compensate, supervise, and otherwise control its employees, Agents and contractors. Each Party shall be solely responsible for payment of any Social Security or other taxes that it is required by Applicable Law to pay in conjunction with its employees, Agents and contractors, and for withholding and remitting to the

applicable taxing authorities any taxes that it is required by Applicable Law to collect from its employees.

- 36.5 Except as otherwise expressly provided in this Agreement, no Party undertakes to perform any obligation of the other Party, whether regulatory or contractual, or to assume any responsibility for the management of the other Party's business.
- 36.6 The relationship of the Parties under this Agreement is a non-exclusive relationship.

### **37. Reservation of Rights**

- 37.1 Notwithstanding anything to the contrary in this Agreement, neither Party waives, and each Party hereby expressly reserves, its rights: (a) to appeal or otherwise seek the reversal of and changes in any arbitration decision associated with this Agreement; (b) to challenge the lawfulness of this Agreement and any provision of this Agreement; (c) to seek changes in this Agreement (including, but not limited to, changes in rates, charges and the Services that must be offered) through changes in Applicable Law; (d) to challenge the lawfulness and propriety of, and to seek to change, any Applicable Law, including, but not limited to any rule, regulation, order or decision of the Commission, the FCC, or a court of applicable jurisdiction; and (e) to collect debts owed to it under any prior interconnection or resale agreements. Nothing in this Agreement shall be deemed to limit or prejudice any position a Party has taken or may take before the Commission, the FCC, any other state or federal regulatory or legislative bodies, courts of applicable jurisdiction, or industry fora. The provisions of this Section shall survive the expiration, cancellation or termination of this Agreement.
- 37.2 Birch acknowledges Birch has been advised by Frontier that it is Frontier's position that this Agreement contains certain provisions which are intended to reflect Applicable Law and Commission and/or FCC arbitration decisions.

### **38. Subcontractors**

A Party may use a contractor of the Party (including, but not limited to, an Affiliate of the Party) to perform the Party's obligations under this Agreement; provided, that a Party's use of a contractor shall not release the Party from any duty or liability to fulfill the Party's obligations under this Agreement.

### **39. Successors and Assigns**

This Agreement shall be binding on and inure to the benefit of the Parties and their respective legal successors and permitted assigns.

### **40. Survival**

The rights, liabilities and obligations of a Party for acts or omissions occurring prior to the expiration, cancellation or termination of this Agreement, the rights, liabilities and obligations of a Party under any provision of this Agreement regarding confidential information (including but not limited to, Section 10), indemnification or defense (including, but not limited to, Section 20), or limitation or exclusion of liability (including, but not limited to, Section 25), and the rights, liabilities and obligations of a Party under any provision of this Agreement which by its terms or nature is intended to continue beyond or to be performed after the expiration, cancellation or termination of this Agreement, shall survive the expiration, cancellation or termination of this Agreement.

#### 41. Taxes

- 41.1 In General. With respect to any purchase of Services under this Agreement, if any federal, state or local tax, fee, surcharge or other tax-like charge, excluding any tax levied on property or net income, (a "Tax") is required or permitted by Applicable Law or a Tariff to be collected from the Purchasing Party by the Providing Party, then (a) the Providing Party shall bill the Purchasing Party for such Tax, as a separately stated item on the invoice, (b) the Purchasing Party shall timely remit such Tax to the Providing Party and (c) the Providing Party shall timely remit such collected Tax to the applicable taxing authority as and to the extent required by Applicable Law.
- 41.2 Taxes Imposed on the Providing Party or Receipts. With respect to any purchase of Services under this Agreement, if any federal, state or local Tax is imposed by Applicable Law on the receipts of the Providing Party, and such Applicable Law permits the Providing Party to exclude certain receipts received from sales to a public utility, distributor, telephone company, local exchange carrier, telecommunications company or other communications company ("Telecommunications Company"), such exclusion being based on the fact that the Purchasing Party is also subject to a tax based upon receipts ("Receipts Tax"), then the Purchasing Party shall pay and remit the Receipts Tax as required by Applicable Law.
- 41.3 Taxes Imposed on Subscriber. With respect to any purchase of Services under this Agreement that are resold to a third party, if any federal, state or local Tax is imposed by Applicable Law on the subscriber, end-user, customer or ultimate consumer ("Subscriber") in connection with any such purchase, which a Telecommunications Company is required to impose and/or collect from a Subscriber, or if any federal, state or local Tax is imposed on the Providing Party and required by Applicable Law to be passed through to the Subscriber, then the Purchasing Party (a) shall impose and/or collect such Tax from the Subscriber and (b) shall timely remit such Tax to the applicable taxing authority.
- 41.4 Tax Exemptions and Exemption Certificates. If Applicable Law clearly exempts a purchase hereunder from a Tax, and if such Applicable Law also provides an exemption procedure, such as an exemption certificate requirement, then, if the Purchasing Party complies with such procedure, the Providing Party shall not collect such Tax during the effective period of such exemption. Such exemption shall be effective upon receipt of the exemption certificate or affidavit in accordance with the terms set forth in Section 41.7. If Applicable Law clearly exempts a purchase hereunder from a Tax, but does not also provide an exemption procedure, then the Providing Party shall not collect such Tax if the Purchasing Party (a) furnishes the Providing Party with a letter signed by an officer requesting such an exemption and citing the provision in the Applicable Law which clearly allows such exemption and (b) supplies the Providing Party with an indemnification agreement, acceptable to the Providing Party, which holds the Providing Party harmless on an after-tax basis with respect to its forbearing to collect such Tax.
- 41.5 Liability for Uncollected Tax, Interest and Penalty.
- 41.5.1 If the Providing Party has not received an exemption certificate from the Purchasing Party and the Providing Party fails to bill the Purchasing Party for any Tax as required by Section 41.1, then, as between the Providing Party and the Purchasing Party, (a) the Purchasing Party shall remain liable for such unbilled Tax and any interest assessed thereon and (b) the Providing Party shall be liable

for any penalty assessed with respect to such unbilled Tax by a taxing authority.

41.5.2 If the Providing Party properly bills the Purchasing Party for any Tax but the Purchasing Party fails to remit such Tax to the Providing Party as required by Section 41.2, then, as between the Providing Party and the Purchasing Party, the Purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority.

41.5.3 If the Providing Party does not collect any Tax as required by Section 41.1 because the Purchasing Party has provided such Providing Party with an exemption certificate that is later found to be inadequate, invalid or inapplicable by a taxing authority, then, as between the Providing Party and the Purchasing Party, the Purchasing Party shall be liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority.

41.5.4 If the Purchasing Party fails to pay the Receipts Tax as required by Section 41.2, then, as between the Providing Party and the Purchasing Party, (a) the Providing Party shall be liable for any Tax imposed on its receipts and (b) the Purchasing Party shall be liable for any interest assessed thereon and any penalty assessed upon the Providing Party with respect to such Tax by the applicable taxing authority.

41.5.5 If the Purchasing Party fails to impose and/or collect any Tax from Subscribers as required by Section 41.3, then, as between the Providing Party and the Purchasing Party, the Purchasing Party shall remain liable for such uncollected Tax and any interest assessed thereon, as well as any penalty assessed with respect to such uncollected Tax by the applicable taxing authority. With respect to any Tax that the Purchasing Party has agreed to pay, or is required to impose on and/or collect from Subscribers, the Purchasing Party agrees to indemnify and hold the Providing Party harmless on an after-tax basis for any costs incurred by the Providing Party as a result of actions taken by the applicable taxing authority to recover the Tax from the Providing Party due to the failure of the Purchasing Party to timely pay, or collect and timely remit, such Tax to such authority.

41.6 Audit Cooperation. In the event either Party is audited by a taxing authority, the other Party agrees to cooperate fully with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

41.7 Notices. All notices, affidavits, exemption-certificates or other communications required or permitted to be given by either Party to the other, for purposes of this Section 41, shall be made in writing and shall be delivered in person or sent by certified mail, return receipt requested, or registered mail, or a courier service providing proof of service, and sent to the addressees set forth in Section 29 as well as to the following:

To Frontier:

Frontier Communications  
Attn: Tax Department  
180 S. Clinton Avenue  
Rochester, New York 14646

To Birch:

Stephen Spohrer  
Tax Manager  
Birch Communications  
2300 Main Street, Ste 600  
Kansas City, MO 64108

Each Party may from time to time designate another address or other addressees by giving notice in accordance with the terms of this Section. Any notice or other communication shall be deemed to be given when received.

**42. Technology Upgrades**

Notwithstanding any other provision of this Agreement, Frontier shall have the right to deploy, upgrade, migrate and maintain its network at its discretion. The Parties acknowledge that Frontier, at its election, may deploy fiber throughout its network and that such fiber deployment may inhibit or facilitate Birch's ability to provide service using certain technologies. Nothing in this Agreement shall limit Frontier's ability to modify its network through the incorporation of new equipment or software or otherwise. Birch shall be solely responsible for the cost and activities associated with accommodating such changes in its own network.

**43. Territory**

- 43.1 This Agreement applies to the territory in which Frontier operates as an Incumbent Local Exchange Carrier in the State of South Carolina. Frontier shall be obligated to provide Services under this Agreement only within this territory.
- 43.2 Notwithstanding any other provision of this Agreement, Frontier may terminate this Agreement as to a specific operating territory or portion thereof if Frontier sells or otherwise transfers its operations in such territory or portion thereof to a third-person. Frontier shall provide Birch with at least 90 calendar days prior written notice of such termination, which shall be effective upon the date specified in the notice.

**44. Third Party Beneficiaries**

Except as expressly set forth in this Agreement, this Agreement is for the sole benefit of the Parties and their permitted assigns, and nothing herein shall create or be construed to provide any third-persons (including, but not limited to, Customers or contractors of a Party) with any rights (including, but not limited to, any third-party beneficiary rights) hereunder. Except as expressly set forth in this Agreement, a Party shall have no liability under this Agreement to the Customers of the other Party or to any other third person.

**45. [This Section Intentionally Left Blank]**

**46. 252(i) Obligations**



To the extent required by Applicable Law, each Party shall comply with Section 252(i) of the Act. To the extent that the exercise by Birch of any rights it may have under Section 252(i) results in the rearrangement of Services by Frontier, Birch shall be solely liable for all costs associated therewith, as well as for any termination charges associated with the termination of existing Frontier Services.

**47. Use of Service**

Each Party shall make commercially reasonable efforts to ensure that its Customers comply with the provisions of this Agreement (including, but not limited to the provisions of applicable Tariffs) applicable to the use of Services purchased by it under this Agreement.

**48. Waiver**

A failure or delay of either Party to enforce any of the provisions of this Agreement, or any right or remedy available under this Agreement or at law or in equity, or to require performance of any of the provisions of this Agreement, or to exercise any option which is provided under this Agreement, shall in no way be construed to be a waiver of such provisions, rights, remedies or options.

**49. Warranties**

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER PARTY MAKES OR RECEIVES ANY WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES PROVIDED, OR TO BE PROVIDED, UNDER THIS AGREEMENT AND THE PARTIES DISCLAIM ANY OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE WARRANTIES AGAINST INFRINGEMENT, AND WARRANTIES ARISING BY TRADE CUSTOM, TRADE USAGE, COURSE OF DEALING OR PERFORMANCE, OR OTHERWISE.

**50. Withdrawal of Services**

50.1 Notwithstanding anything contained in this Agreement, except as otherwise required by Applicable Law, Frontier may terminate its offering and/or provision of any Service under this Agreement upon thirty (30) days prior written notice to Birch.

50.2 Notwithstanding anything contained in this Agreement, except as otherwise required by Applicable Law, Frontier may with thirty (30) days prior written notice to Birch terminate any provision of this Agreement that provides for the payment by Frontier to Birch of compensation related to traffic, including, but not limited to, Reciprocal Compensation and other types of compensation for termination of traffic delivered by Frontier to Birch. Following such termination, except as otherwise agreed in writing by the Parties, Frontier shall be obligated to provide compensation to Birch related to traffic only to the extent required by Applicable Law. If Frontier exercises its right of termination under this Section, the Parties shall negotiate in good faith appropriate substitute provisions for compensation related to traffic; provided, however, that except as otherwise voluntarily agreed by Frontier in writing in its sole discretion, Frontier shall be obligated to provide compensation to Birch related to traffic only to the extent required by Applicable Law. If within thirty (30) days after Frontier's notice of termination the Parties are unable to agree in writing upon mutually acceptable substitute provisions for compensation related to traffic, either Party may submit their disagreement to dispute resolution in accordance with Section 14 of this Agreement.



**SIGNATURE PAGE**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date.

**BIRCH TELECOM OF THE SOUTH, INC. d/b/a  
BIRCH COMMUNICATIONS**

By: \_\_\_\_\_

Printed:

Title:

**FRONTIER COMMUNICATIONS OF THE  
CAROLINAS INC.**

By: \_\_\_\_\_

Printed: STEPHEN LEVIAW

Title: GYP CARRIER SALES & SERVICE

## **GLOSSARY**

### **1. General Rule**

- 1.1 The provisions of Sections 1.2 through 1.4 and Section 2 apply with regard to the Principal Document. Terms used in a Tariff shall have the meanings stated in the Tariff.
- 1.2 Unless the context clearly indicates otherwise, when a term listed in this Glossary is used in the Principal Document, the term shall have the meaning stated in this Glossary. A defined term intended to convey the meaning stated in this Glossary is capitalized when used. Other terms that are capitalized, and not defined in this Glossary or elsewhere in the Principal Document, shall have the meaning stated in the Act. Additional definitions that are specific to the matters covered in a particular provision of the Principal Document may appear in that provision. To the extent that there may be any conflict between a definition set forth in this Glossary and any definition in a specific provision, the definition set forth in the specific provision shall control with respect to that provision.
- 1.3 Unless the context clearly indicates otherwise, any term defined in this Glossary which is defined or used in the singular shall include the plural, and any term defined in this Glossary which is defined or used in the plural shall include the singular.
- 1.4 The words "shall" and "will" are used interchangeably throughout the Principal Document and the use of either indicates a mandatory requirement. The use of one or the other shall not confer a different degree of right or obligation for either Party.

### **2. Definitions**

- 2.1 Act.  
The Communications Act of 1934 (47 U.S.C. §151 et seq.), as from time to time amended (including, but not limited to, by the Telecommunications Act of 1996).
- 2.2 Advanced Services.  
As a general matter, shall have the meaning set forth by the FCC.
- 2.3 Affiliate.  
Shall have the meaning set forth in the Act.
- 2.4 Agent.  
An agent or servant.
- 2.5 Agreement.  
This Agreement, as defined in Section 1 of the General Terms and Conditions.
- 2.6 ALI (Automatic Location Identification) Database.  
The emergency services (E-911) database controlled by Frontier containing

caller address/location information including the carrier name, National Emergency Numbering Administration ("NENA") ID, Call Back Number, and other carrier information used to process caller location records.

2.7 Ancillary Traffic.

All traffic that is destined for ancillary services, or that may have special billing requirements, including but not limited to the following: directory assistance, 911/E-911, operator services (IntraLATA call completion), IntraLATA third party, collect and calling card, 800/888 database query and LIDB.

2.8 ANI (Automatic Number Identification).

The signaling parameter that refers to the number transmitted through the network identifying the billing number of the calling party.

2.9 Applicable Law.

All effective laws, government regulations and government orders, applicable to each Party's performance of its obligations under this Agreement. For the avoidance of any doubt, when used in relation to unbundled Network Elements or Combinations of unbundled Network Elements, the term "Applicable Law" means the Federal Unbundling Rules.

2.10 ASR (Access Service Request).

An industry standard form, which contains data elements and usage rules used by the Parties to add, establish, change or disconnect services or trunks for the purposes of interconnection.

2.11 ATIS.

The Alliance for Telecommunications Industry Solutions.

2.12 BFR (Bona Fide Request).

The process described in the Network Element Attachment that prescribes the terms and conditions relating to a Party's request that the other Party provide a UNE that it is not otherwise required to provide under the terms of this Agreement.

2.13 Business Day.

Monday through Friday, except for holidays observed by Frontier.

2.14 Calendar Quarter.

January through March, April through June, July through September, or October through December.

2.15 Calendar Year.

January through December.

2.16 [Intentionally Left Blank].

2.17 Call Back Number.

A telephone number that can be used by the PSAP to re-contact the location from which a 911/E-911 Call was placed. The telephone number may or may not be the telephone number of the station used to originate the 911/E-911 Call.

2.18 CCS (Common Channel Signaling).

A method of transmitting call set-up and network control data over a digital signaling network separate from the public switched telephone network facilities that carry the actual voice or data content of the call.

2.19 Central Office.

An End Office or Tandem. Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

2.20 [Intentionally Left Blank].

2.21 Claims.

Any and all claims, demands, suits, actions, settlements, judgments, fines, penalties, liabilities, injuries, damages, losses, costs (including, but not limited to, court costs), and expenses (including, but not limited to, reasonable attorney's fees).

2.22 CLEC (Competitive Local Exchange Carrier).

Any Local Exchange Carrier other than Frontier that is operating as a Local Exchange Carrier in the territory in which Frontier operates as an ILEC in the State of South Carolina. Birch is or shortly will become a CLEC.

2.23 CLLI Codes.

Common Language Location Identifier Codes.

2.24 CMDS (Centralized Message Distribution System).

The billing record and clearing house transport system that LECs use to exchange out collects and in collects as well as Carrier Access Billing System (CABS) records.

2.25 Commission.

Public Service Commission of South Carolina.

2.26 Controlling 911 Authority.

The duly authorized state, county or local government agency empowered by law to oversee the 911/E-911 services, operations and systems within a defined jurisdiction.

2.27 CPN (Calling Party Number).

A CCS parameter that identifies the calling party's telephone number.

2.28 CPNI (Customer Proprietary Network Information).

Shall have the meaning set forth in Section 222 of the Act, 47 U.S.C. § 222.

2.29 Cross Connection.

For a collocation arrangement, the facilities between the collocating Party's equipment and the equipment or facilities of the housing Party (such as the housing Party's digital signal cross connect, Main Distribution Frame, or other suitable frame or panel).

2.30 Customer.

A third party residence or business end-user subscriber to Telephone Exchange Services provided by either of the Parties.

2.31 Dark Fiber Loop.

Consists of fiber optic strand(s) in a Frontier fiber optic cable between Frontier's accessible terminal, such as the fiber distribution frame, or its functional equivalent, located within a Frontier End Office, and Frontier's accessible terminal located in Frontier's main termination point at a Customer premises, such as a fiber patch panel, and that Frontier has not activated through connection to electronics that "light" it and render it capable of carrying Telecommunications Services.

2.32 Dark Fiber Transport.

An optical transmission facility, within a LATA, that Frontier has not activated by attaching multiplexing, aggregation or other electronics, between Frontier switches (as identified in the LERG) or UNE Wire Centers.

2.33 Dedicated Transport.

A DS0-, DS1-, or DS3-capacity transmission facility between Frontier switches (as identified in the LERG) or UNE Wire Centers, within a LATA, that is dedicated to a particular end user or carrier. Dedicated Transport is sometimes referred to as dedicated interoffice facilities ("IOF"). Dedicated Transport does not include any facility that does not connect a pair of Frontier UNE Wire Centers.

2.34 Default PSAP.

The PSAP designated by the Controlling 911 Authority to receive a 911/E-911 Call when it is not feasible to route that 911/E-911 Call to the Designated PSAP.

2.35 Designated PSAP.

The primary PSAP designated by the Controlling 911 Authority to receive a 911/E-911 Call based upon the geographic location of the end user.

2.36 Digital Signal Level.

One of several transmission rates in the time-division multiplex hierarchy.

2.37 Discontinued Facility.

Any facility, element, arrangement or the like that the Federal Unbundling Rules do not require Frontier to provide on an unbundled basis to Birch, whether because the facility was never subject to an unbundling requirement under the

Federal Unbundling Rules, because the facility by operation of law has ceased or ceases to be subject to an unbundling requirement under the Federal Unbundling Rules, or otherwise.

2.38 DS0 (Digital Signal Level 0).

The 64kbps zero-level signal in the time-division multiplex hierarchy.

2.39 DS1 (Digital Signal Level 1).

The 1.544 Mbps first-level signal in the time-division multiplex hierarchy.

2.40 DS1 Dedicated Transport.

Dedicated Transport having a total digital signal speed of 1.544 Mbps.

2.41 DS3 (Digital Signal Level 3).

The 44.736 Mbps third-level signal in the time-division multiplex hierarchy.

2.42 DS3 Dedicated Transport.

Dedicated Transport having a total digital signal speed of 44.736 Mbps.

2.43 DS3 Loop.

A digital transmission channel, between the main distribution frame (or its equivalent) in an end user's serving UNE Wire Center and the demarcation point at the end user customer's premises, suitable for the transport of isochronous bipolar serial data at a rate of 44.736 Mbps (the equivalent of 28 DS1 channels). This Loop type is more fully described in Frontier TR 72575, as revised from time to time. A DS3 Loop requires the electronics necessary to provide the DS3 transmission rate.

2.44 EMI (Exchange Message Interface).

Standard used for the interexchange of telecommunications message information between local exchange carriers and interexchange carriers for billable, non-billable, sample, settlement and study data. Data is provided between companies via a unique record layout that contains Customer billing information, account summary and tracking analysis. EMI format is contained in document SR-320 published by ATIS.

2.45 End Office.

A switching entity that is used for connecting lines to lines or lines to trunks for the purpose of originating/terminating calls. Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

2.46 [Intentionally Left Blank].

2.47 Exchange Access.

Shall have the meaning set forth in the Act.

2.48 Extended Local Calling Scope Arrangement.



An arrangement that provides a Customer a local calling scope (Extended Area Service, "EAS"), outside of the Customer's basic exchange serving area. Extended Local Calling Scope Arrangements may be either optional or non-optional. "Optional Extended Local Calling Scope Arrangement Traffic" is traffic that under an optional Extended Local Calling Scope Arrangement chosen by the Customer terminates outside of the Customer's basic exchange serving area.

2.49 FCC.

The Federal Communications Commission.

2.50 FCC Internet Orders.

The following FCC orders: (a) Order on Remand and Report and Order, *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Intercarrier Compensation for ISP Bound Traffic*, FCC 01-131, CC Docket Nos. 96-98 and 99-68, 16 FCC Rcd 9151 (adopted April 18, 2001) (hereinafter the "April 18, 2001 FCC Internet Order"); and, (b) Order on Remand and Report and Order and Further Notice of Proposed Rulemaking, *In the Matter of High-Cost Universal Service Support; Federal-State Joint Board on Universal Service; Lifeline and Link Up; Universal Service Contribution Methodology; Numbering Resource Optimization; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Developing a Unified Intercarrier Compensation Regime; Intercarrier Compensation for ISP-Bound Traffic; IP-Enabled Services*, FCC 08-262, CC Docket Nos. 96-45, 96-98, 99-68, 99-200, 01-92, WC Docket Nos. 03-109, 04-36, 05-337, 06-122 (adopted November 5, 2008) (hereinafter the "November 5, 2008 FCC Internet Order").

2.51 FCC Regulations.

The unstayed, effective regulations promulgated by the FCC, as amended from time to time.

2.52 Federal Unbundling Rules.

Any lawful requirement to provide access to unbundled Network Elements or Combinations of unbundled Network Elements that is imposed upon Frontier by the FCC pursuant to both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Any reference in this Agreement to "Federal Unbundling Rules" shall not include an unbundling requirement if the unbundling requirement does not exist under both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

2.53 Feeder.

The fiber optic cable (lit or unlit) or metallic portion of a Loop between a serving End Office and a remote terminal or feeder/distribution interface.

2.54 FNID (Fiber Network Interface Device).

A passive fiber optic demarcation unit designed for the interconnection and demarcation of optical fibers between two separate network providers.

2.55 FTTP Loop.

A Loop consisting entirely of fiber optic cable, whether dark or lit, that extends

from the main distribution frame (or its equivalent) in an end user's serving End Office to the demarcation point at the end user's customer premises or to a serving area interface at which the fiber optic cable connects to copper or coaxial distribution facilities that extend to the end user's customer premises demarcation point, provided that all copper or coaxial distribution facilities extending from such serving area interface are not more than 500 feet from the demarcation point at the respective end users' customer premises; provided, however, that in the case of predominantly residential multiple dwelling units (MDUs), an FTTP Loop is a Loop consisting entirely of fiber optic cable, whether dark or lit, that extends from the main distribution frame (or its equivalent) in the End Office that serves the multiunit premises: (a) to or beyond the multiunit premises' minimum point of entry (MPOE), as defined in 47 C.F.R. § 68.105; or (b) to a serving area interface at which the fiber optic cable connects to copper or coaxial distribution facilities that extend to or beyond the multiunit premises' MPOE, provided that all copper or coaxial distribution facilities extending from such serving area interface are not more than 500 feet from the MPOE at the multiunit premises.

2.56 House and Riser Cable.

A two-wire metallic distribution facility in Frontier's network between the minimum point of entry for a building where a premises of a Customer is located (such a point, an "MPOE") and the Rate Demarcation Point for such facility (or NID) if the NID is located at such Rate Demarcation Point).

2.57 Hybrid Loop.

A Loop composed of both fiber optic cable and copper wire or cable. An FTTP Loop is not a Hybrid Loop.

2.58 IDLC (Integrated Digital Loop Carrier).

A subscriber Loop carrier system that integrates within the switch at a DS1 level, which is twenty-four (24) Loop transmission paths combined into a 1.544 Mbps digital signal.

2.59 ILEC (Incumbent Local Exchange Carrier).

Shall have the meaning stated in the Act.

2.60 Information Access.

The provision of specialized exchange telecommunications services in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of a provider of information services, including a provider of Internet access or Internet transmission services.

2.61 Inside Wire or Inside Wiring.

All wire, cable, terminals, hardware, and other equipment or materials, on the Customer's side of the Rate Demarcation Point.

2.62 Interconnection Wire Center.

A building or portion thereof which serves as the premises for one or more End

Offices, Tandems and related facilities.

2.63 Internet Traffic.

Any traffic that is transmitted to or returned from the Internet at any point during the duration of the transmission.

2.64 InterLATA Service.

Shall have the meaning set forth in the Act.

2.65 IntraLATA.

Telecommunications that originate and terminate within the same LATA.

2.66 [Intentionally Left Blank].

2.67 ISDN (Integrated Services Digital Network).

A switched network service providing end-to-end digital connectivity for the simultaneous transmission of voice and data. Basic Rate Interface-ISDN (BRI-ISDN) provides for digital transmission of two (2) 64 kbps bearer channels and one (1) 16 kbps data and signaling channel (2B+D). Primary Rate Interface-ISDN (PRI-ISDN) provides for digital transmission of twenty-three (23) 64 kbps bearer channels and one (1) 64 kbps data and signaling channel (23B+D).

2.68 IXC (Interexchange Carrier).

A Telecommunications Carrier that provides, directly or indirectly, InterLATA or IntraLATA Telephone Toll Services.

2.69 LATA (Local Access and Transport Area).

Shall have the meaning set forth in the Act.

2.70 LEC (Local Exchange Carrier).

Shall have the meaning set forth in the Act.

2.71 LERG (Local Exchange Routing Guide).

A Telcordia Technologies reference containing NPA/NXX routing and homing information.

2.72 LIDB (Line Information Data Base).

Line Information databases which provide, among other things, calling card validation functionality for telephone line number cards issued by Frontier and other entities and validation data for collect and third number-billed calls (e.g., data for billed number screening).

2.73 [Intentionally Left Blank].

2.74 Line Side.

An End Office connection that provides transmission, switching and optional features suitable for Customer connection to the public switched network,

including loop start supervision, ground start supervision and signaling for BRI-ISDN service.

2.75 Loop.

A transmission path that extends from a Main Distribution Frame or functionally comparable piece of equipment in a Customer's serving End Office, to the Rate Demarcation Point (or NID if installed at the Rate Demarcation Point) in or at the Customer's premises. The actual transmission facilities used to provide a Loop may utilize any of several technologies.

2.76 LSR (Local Service Request).

An industry standard form, which contains data elements and usage rules, used by the Parties to establish, add, change or disconnect resold Telecommunications Services and Network Elements.

2.77 Maintenance Control Office.

Either Party's center responsible for control of the maintenance and repair of a circuit.

2.78 MDF (Main Distribution Frame).

The primary point at which outside plant facilities terminate within an Interconnection Wire Center, for interconnection to other Telecommunications facilities within the Interconnection Wire Center. The distribution frame used to interconnect cable pairs and line trunk equipment terminating on a switching system.

2.79 Measured Internet Traffic.

Dial-up, switched Internet Traffic originated by a Customer of one Party on that Party's network at a point in a Frontier local calling area, and delivered to a Customer or an Internet Service Provider served by the other Party, on that other Party's network at a point in the same Frontier local calling area. Frontier local calling areas shall be as defined by Frontier. For the purposes of this definition, a Frontier local calling area includes a Frontier non-optional Extended Local Calling Scope Arrangement, but does not include a Frontier optional Extended Local Calling Scope Arrangement. Calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis, are not considered Measured Internet Traffic. For the avoidance of any doubt, Virtual Foreign Exchange Traffic (i.e., V/FX Traffic) (as defined in the Interconnection Attachment) does not constitute Measured Internet Traffic.

2.80 MECAB (Multiple Exchange Carrier Access Billing).

A document prepared by the Billing Committee of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of ATIS. The MECAB document, published by ATIS as "ATIS/OBF-MECAB", as revised from time to time, contains the recommended guidelines for the billing of an Exchange Access Service provided by two or more LECs, or by one LEC in two or more states, within a single LATA.

2.81 MECOD (Multiple Exchange Carriers Ordering and Design Guidelines for Access Services - Industry Support Interface).

A document developed by the Ordering/Provisioning Committee under the auspices of the Ordering and Billing Forum (OBF), which functions under the auspices of the Carrier Liaison Committee (CLC) of ATIS. The MECOD document, published by ATIS as "ATIS/OBF-MECOD", as revised from time to time, establishes methods for processing orders for Exchange Access Service that is to be provided by two or more LECs.

2.82 [Intentionally Left Blank].

2.83 Mobile Wireless Services.

Any mobile wireless Telecommunications Service, including any commercial mobile radio service.

2.84 NANP (North American Numbering Plan).

The system of telephone numbering employed in the United States, Canada, Bermuda, Puerto Rico and certain Caribbean islands. The NANP format is a 10-digit number that consist of a 3-digit NPA Code (commonly referred to as the area code), followed by a 3-digit NXX code and 4 digit line number.

2.85 Network Element.

Shall have the meaning stated in the Act.

2.86 NID (Network Interface Device).

The Frontier provided interface terminating Frontier's Telecommunications network on the property where the Customer's service is located at a point determined by Frontier. The NID contains an FCC Part 68 registered jack from which Inside Wire may be connected to Frontier's network.

2.87 911/E-911 Call(s).

Call(s) made by the Birch end user by dialing the three digit telephone number "911" to facilitate the reporting of an emergency requiring response by a public safety agency.

2.88 911/E-911 Service Provider.

An entity authorized to provide 911/E-911 network and database services within a particular jurisdiction.

2.89 Non-Revertive.

Where traffic is redirected to a protection line because of failure of a working line and the working line is repaired, traffic will remain on the protection line until there is either manual intervention or a failure of the protection line.

2.90 NPA (Numbering Plan Area).

Also sometimes referred to as an area code, is the first three-digit indicator of each 10-digit telephone number within the NANP. There are two general categories of NPA, "Geographic NPAs" and "Non-Geographic NPAs". A Geographic NPA is associated with a defined geographic area, and all telephone numbers bearing such NPA are associated with services provided within that geographic area. A Non-Geographic NPA, also known as a "Service Access

Code" or "SAC Code" is typically associated with a specialized Telecommunications Service that may be provided across multiple geographic NPA areas. 500, 700, 800, 888 and 900 are examples of Non-Geographic NPAs.

- 2.91 NXX, NXX Code, Central Office Code or CO Code.

The three-digit switch entity indicator (i.e. the first three digits of a seven-digit telephone number).

- 2.92 Order.

An order or application to provide, change or terminate a Service (including, but not limited to, a commitment to purchase a stated number or minimum number of lines or other Services for a stated period or minimum period of time).

- 2.93 Originating Switched Access Detail Usage Data.

A category 1101XX record as defined in the EMI Telcordia Practice BR-010-200-010.

- 2.94 POI (Point of Interconnection).

The physical location where the Parties' respective facilities physically interconnect for the purpose of mutually exchanging their traffic. As set forth in the Interconnection Attachment, a Point of Interconnection shall be at (i) a technically feasible point on Frontier's network in a LATA and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement. By way of example, a technically feasible Point of Interconnection on Frontier's network in a LATA would include an applicable Frontier Tandem Interconnection Wire Center or Frontier End Office Interconnection Wire Center but, notwithstanding any other provision of this Agreement or otherwise, would not include a Birch Interconnection Wire Center, Birch switch or any portion of a transport facility provided by Frontier to Birch or another party between (x) a Frontier Interconnection Wire Center or switch and (y) the Interconnection Wire Center or switch of Birch or another party.

- 2.95 Primary Reference Source.

Equipment that provides a timing signal to synchronize network elements.

- 2.96 Principal Document.

This document, including, but not limited to, the Title Page, the Table of Contents, the Preface, the General Terms and Conditions, the signature page, this Glossary, the Attachments, and the Appendices to the Attachments.

- 2.97 Providing Party.

A Party offering or providing a Service to the other Party under this Agreement.

- 2.98 PSAP.

Public Safety Answering Point.

- 2.99 Purchasing Party.

A Party requesting or receiving a Service from the other Party under this Agreement.

2.100 Qualifying UNE.

An unbundled Network Element or a combination of unbundled Network Elements obtained, pursuant to the Federal Unbundling Rules, under this Agreement or a Frontier UNE Tariff.

2.101 Qualifying Wholesale Services.

Wholesale services obtained from Frontier under a Frontier access Tariff or a separate wholesale agreement.

2.102 Rate Center Area.

The geographic area that has been identified by a given LEC as being associated with a particular NPA-NXX code assigned to the LEC for its provision of Telephone Exchange Services. The Rate Center Area is the exclusive geographic area that the LEC has identified as the area within which it will provide Telephone Exchange Services bearing the particular NPA-NXX designation associated with the specific Rate Center Area.

2.103 Rate Center Point.

A specific geographic point, defined by a V&H coordinate, located within the Rate Center Area and used to measure distance for the purpose of billing for distance-sensitive Telephone Exchange Services and Toll Traffic. Pursuant to Telcordia Practice BR-795-100-100, the Rate Center Point may be an End Office location, or a "LEC Consortium Point of Interconnection".

2.104 Rate Demarcation Point.

The physical point in a Frontier provided network facility at which Frontier's responsibility for maintaining that network facility ends and the Customer's responsibility for maintaining the remainder of the facility begins, as set forth in this Agreement, Frontier's applicable Tariffs, if any, or as otherwise prescribed under Applicable Law.

2.105 Reciprocal Compensation.

The arrangement for recovering, in accordance with Section 251(b)(5) of the Act, the FCC Internet Orders, and other applicable FCC orders and FCC Regulations, costs incurred for the transport and termination of Reciprocal Compensation Traffic originating on one Party's network and terminating on the other Party's network (as set forth in Section 7 of the Interconnection Attachment).

2.106 Reciprocal Compensation Traffic.

Telecommunications traffic originated by a Customer of one Party on that Party's network and terminated to a Customer of the other Party on that other Party's network, except for Telecommunications traffic that is interstate or intrastate Exchange Access, Information Access, or exchange services for Exchange Access or Information Access. The determination of whether Telecommunications traffic is Exchange Access or Information Access shall be based upon Frontier's local calling areas as defined by Frontier. Reciprocal

Compensation Traffic does not include the following traffic (it being understood that certain traffic types will fall into more than one (1) of the categories below that do not constitute Reciprocal Compensation Traffic): (1) any Internet Traffic; (2) traffic that does not originate and terminate within the same Frontier local calling area as defined by Frontier, and based on the actual originating and terminating points of the complete end-to-end communication; (3) Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis; (4) Optional Extended Local Calling Scope Arrangement Traffic; (5) special access, private line, Frame Relay, ATM, or any other traffic that is not switched by the terminating Party; (6) Tandem Transit Traffic; (7) Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment); or, (8) Virtual Foreign Exchange Traffic (or V/FX Traffic) (as defined in the Interconnection Attachment). For the purposes of this definition, a Frontier local calling area includes a Frontier non-optional Extended Local Calling Scope Arrangement, but does not include a Frontier optional Extended Local Calling Scope Arrangement.

2.107 Retail Prices.

The prices at which a Service is provided by Frontier at retail to subscribers who are not Telecommunications Carriers.

2.108 Routing Point.

A specific geographic point identified by a specific V&H coordinate. The Routing Point is used to route inbound traffic to specified NPA-NXXs. The Routing Point must be located within the LATA in which the corresponding NPA-NXX is located. However, the Routing Point associated with each NPA-NXX need not be the same as the corresponding Rate Center Point, nor must it be located within the corresponding Rate Center Area, nor must there be a unique and separate Routing Point corresponding to each unique and separate Rate Center Area.

2.109 Service.

Any Interconnection arrangement, Network Element, Telecommunications Service, collocation arrangement, or other service, facility or arrangement, offered by a Party under this Agreement.

2.110 [Intentionally Left Blank].

2.111 SS7 (Signaling System 7).

The common channel out-of-band signaling protocol developed by the Consultative Committee for International Telephone and Telegraph (CCITT) and the American National Standards Institute (ANSI). Frontier and Birch utilize this out-of-band signaling protocol in relation to their routing and completion of traffic.

2.112 Subsidiary.

A corporation or other person that is controlled by a Party.

2.113 Sub-Loop Distribution Facility.

A two-wire or four-wire metallic distribution facility in Frontier's network between a Frontier feeder distribution interface ("FDI") and the Rate Demarcation Point for such facility (or NID if the NID is located at such Rate Demarcation Point).



2.114 Switched Exchange Access Service.

The offering of transmission and switching services for the purpose of the origination or termination of Toll Traffic. Switched Exchange Access Services include but may not be limited to: Feature Group A, Feature Group B, Feature Group D, 700 access, 800 access, 888 access and 900 access.

2.115 Tandem.

A switching entity that has billing and recording capabilities and is used to connect and switch trunk circuits between and among End Offices and between and among End Offices and carriers' aggregation points, points of termination, or points of presence, and to provide Switched Exchange Access Services. Sometimes this term is used to refer to a telephone company building in which switching systems and telephone equipment are installed.

2.116 Tariff.

2.116.1 Any applicable Federal or state tariff of a Party, as amended from time to time; or

2.116.2 Any standard agreement or other document, as amended from time to time, that sets forth the generally available terms, conditions and prices under which a Party offers a Service.

The term "Tariff" does not include any Frontier Statement of Generally Available Terms (SGAT) which has been approved or is pending approval by the Commission pursuant to Section 252(f) of the Act.

2.117 Telcordia Technologies.

Telcordia Technologies, Inc., formerly known as Bell Communications Research, Inc. (Bellcore).

2.118 Telecommunications Carrier.

Shall have the meaning set forth in the Act.

2.119 Telecommunications Services.

Shall have the meaning set forth in the Act.

2.120 Telephone Exchange Service.

Shall have the meaning set forth in the Act.

2.121 Terminating Switched Access Detail Usage Data.

A category 1101XX record as defined in the EMI Telcordia Practice BR-010-200-010.

2.122 Third Party Claim.

A Claim where there is (a) a claim, demand, suit or action by a person who is not a Party, (b) a settlement with, judgment by, or liability to, a person who is not a Party, or (c) a fine or penalty imposed by a person who is not a Party.

2.123 Toll Traffic.

Traffic that is originated by a Customer of one Party on that Party's network and terminates to a Customer of the other Party on that other Party's network and is not Reciprocal Compensation Traffic, Measured Internet Traffic, or Ancillary Traffic. Toll Traffic may be either "IntraLATA Toll Traffic" or "InterLATA Toll Traffic", depending on whether the originating and terminating points are within the same LATA.

2.124 Toxic or Hazardous Substance.

Any substance designated or defined as toxic or hazardous under any "Environmental Law" or that poses a risk to human health or safety, or the environment, and products and materials containing such substance. "Environmental Laws" means the Comprehensive Environmental Response, Compensation, and Liability Act, the Emergency Planning and Community Right-to-Know Act, the Water Pollution Control Act, the Air Pollution Control Act, the Toxic Substances Control Act, the Resource Conservation and Recovery Act, the Occupational Safety and Health Act, and all other Federal, State or local laws or governmental regulations or requirements, that are similar to the above-referenced laws or that otherwise govern releases, chemicals, products, materials or wastes that may pose risks to human health or safety, or the environment, or that relate to the protection of wetlands or other natural resources.

2.125 Traffic Factor 1.

For traffic exchanged via Interconnection Trunks, a percentage calculated by dividing the number of minutes of interstate traffic (excluding Measured Internet Traffic) by the total number of minutes of interstate and intrastate traffic. 
$$\left( \frac{\text{Interstate Traffic Total Minutes of Use (excluding Measured Internet Traffic)}}{\text{Interstate Traffic Total Minutes of Use} + \text{Intrastate Traffic Total Minutes of Use}} \times 100 \right)$$
. Until the form of a Party's bills is updated to use the term "Traffic Factor 1", the term "Traffic Factor 1" may be referred to on the Party's bills and in billing related communications as "Percent Interstate Usage" or "PIU".

2.126 Traffic Factor 2.

For traffic exchanged via Interconnection Trunks, a percentage calculated by dividing the combined total number of minutes of Reciprocal Compensation Traffic and Measured Internet Traffic by the combined total number of minutes of intrastate traffic and Measured Internet Traffic. 
$$\left( \frac{\text{Reciprocal Compensation Traffic Total Minutes of Use} + \text{Measured Internet Traffic Total Minutes of Use}}{\text{Intrastate Traffic Total Minutes of Use} + \text{Measured Internet Traffic Total Minutes of Use}} \times 100 \right)$$
. Until the form of a Party's bills is updated to use the term "Traffic Factor 2", the term "Traffic Factor 2" may be referred to on the Party's bills and in billing related communications as "Percent Local Usage" or "PLU".

2.127 Triennial Review Remand Order (TRRO).

The FCC's Order on Remand in WC Docket No. 04-313 and CC Docket No. 01-338, released on February 4, 2005.

2.128 Trunk Side.

A Central Office Switch connection that is capable of, and has been programmed to treat the circuit as, connecting to another switching entity, for example, to another carrier's network. Trunk side connections offer those transmission and signaling features appropriate for the connection of switching entities and cannot be used for the direct connection of ordinary telephone station sets.

2.129 UDLC (Universal Digital Loop Carrier).

UDLC arrangements consist of a Central Office Terminal and a Remote Terminal located in the outside plant or at a Customer premises. The Central Office and the Remote Terminal units perform analog to digital conversions to allow the feeding facility to be digital. UDLC is deployed where the types of services to be provisioned by the systems cannot be integrated such as non-switched services and UNE Loops.

2.130 UNE Wire Center.

Shall have the same meaning as "Wire Center" set forth in 47 C.F.R. § 51.5.

2.131 V and H Coordinates Method.

A method of computing airline miles between two points by utilizing an established formula that is based on the vertical and horizontal coordinates of the two points.

2.132 Voice Grade.

Either an analog signal of 300 to 3000 Hz or a digital signal of 56/64 kilobits per second. When referring to digital Voice Grade service (a 56-64 kbps channel), the terms "DS0" or "sub-DS1" may also be used.

2.133 xDSL.

As defined and offered in this Agreement. The small "x" before the letters DSL signifies reference to DSL as a generic transmission technology, as opposed to a specific DSL "flavor".

## ADDITIONAL SERVICES ATTACHMENT

### 1. Alternate Billed Calls

- 1.1 The Parties will engage in settlements of intraLATA intrastate alternate-billed calls (e.g., collect, calling card, and third-party billed calls) originated or authorized by their respective Customers in accordance with an arrangement mutually agreed to by the Parties.

### 2. Dialing Parity - Section 251(b)(3)

Each Party shall provide the other Party with nondiscriminatory access to such services and information as are necessary to allow the other Party to implement local Dialing Parity in accordance with the requirements of Section 251(b)(3) of the Act.

### 3. [This Section Intentionally Left Blank]

### 4. Directory Listing and Directory Distribution

To the extent required by Applicable Law, Frontier will provide directory services to Birch. Such services will be provided in accordance with the terms set forth herein.

#### 4.1 Listing Information.

As used herein, "Listing Information" means a Birch Customer's primary name, address (including city, state and zip code), telephone number(s), the delivery address and number of directories to be delivered, and, in the case of a business Customer, the primary business heading under which the business Customer desires to be placed, and any other information Frontier deems necessary for the publication and delivery of directories.

#### 4.2 Listing Information Supply.

Birch shall provide to Frontier on a regularly scheduled basis, at no charge, and in a format required by Frontier or by a mutually agreed upon industry standard (e.g., Ordering and Billing Forum developed) all Listing Information and the service address for each Birch Customer whose service address location falls within the geographic area covered by the relevant Frontier directory. Birch shall also provide to Frontier on a daily basis: (a) information showing Birch Customers who have disconnected or terminated their service with Birch; and (b) delivery information for each non-listed or non-published Birch Customer to enable Frontier to perform its directory distribution responsibilities. Frontier shall promptly provide to Birch (normally within forty-eight (48) hours of receipt by Frontier, excluding non-business days) a query on any listing that is not acceptable.

#### 4.3 Listing Inclusion and Distribution.

Frontier shall include each Birch Customer's primary listing in the appropriate alphabetical directory and, for business Customers, in the appropriate classified (Yellow Pages) directory in accordance with the directory configuration, scope and schedules determined by Frontier in its sole discretion, and shall provide initial distribution of such directories to such Birch Customers in the same manner it provides initial distribution of such directories to its own Customers. "Primary Listing" means a Customer's primary name, address, and telephone

number. Listings of Birch's Customers shall be interfiled with listings of Frontier's Customers and the Customers of other LECs included in the Frontier directories. Birch shall pay Frontier's Tariffed charges for additional, foreign, and other listings products (as documented in local Tariff) for Birch's Customers.

4.4 Frontier Information.

Upon request by Birch, Frontier shall make available to Birch the following information to the extent that Frontier provides such information to its own business offices: a directory list of relevant NXX codes, directory and Customer Guide close dates, and Yellow Pages headings. Frontier shall also make available to Birch, on Frontier's Wholesale website (or, at Frontier's option, in writing) Frontier's directory listings standards and specifications.

4.5 Confidentiality of Listing Information.

Frontier shall accord Birch Listing Information the same level of confidentiality that Frontier accords its own listing information, and shall use such Listing Information solely for the purpose of providing directory-related services; provided, however, that should Frontier elect to do so, it may use or license Birch Listing Information for directory publishing, direct marketing, or any other purpose for which Frontier uses or licenses its own listing information, so long as Birch Customers are not separately identified as such; and provided further that Birch may identify those of its Customers who request that their names not be sold for direct marketing purposes and Frontier shall honor such requests to the same extent that it does for its own Customers. Frontier shall not be obligated to compensate Birch for Frontier's use or licensing of Birch Listing Information.

4.6 Accuracy.

Both Parties shall use commercially reasonable efforts to ensure the accurate publication of Birch Customer listings. At Birch's request, Frontier shall provide Birch with a report of all Birch Customer listings in a reasonable timeframe prior to the service order close date for the applicable directory. Frontier shall process any corrections made by Birch with respect to its listings, provided such corrections are received prior to the close date of the particular directory.

4.7 Indemnification.

Birch shall adhere to all practices, standards, and ethical requirements established by Frontier with regard to listings. By providing Frontier with Listing Information, Birch warrants to Frontier that Birch has the right to provide such Listing Information to Frontier on behalf of its Customers. Birch shall make commercially reasonable efforts to ensure that any business or person to be listed is authorized and has the right (a) to provide the product or service offered, and (b) to use any personal or corporate name, trade name, trademark, service mark or language used in the listing. Birch agrees to release, defend, hold harmless and indemnify Frontier from and against any and all claims, losses, damages, suits, or other actions, or any liability whatsoever, suffered, made, instituted, or asserted by any person arising out of Frontier's publication or dissemination of the Listing Information as provided by Birch hereunder.

4.8 Liability.

Frontier's liability to Birch in the event of a Frontier error in or omission of a Birch Customer listing shall not exceed the amount actually paid by Birch to Frontier for

such listing. Birch agrees to take all reasonable steps, including, but not limited to, entering into appropriate contractual provisions with its Customers, to ensure that its and Frontier's liability to Birch's Customers in the event of a Frontier error in or omission of a listing shall be subject to the same limitations of liability applicable between Frontier and its own Customers as set forth in Frontier's applicable Tariffs.

**4.9 Service Information Pages.**

Frontier shall include all Birch NXX codes associated with the geographic areas to which each directory pertains, to the extent it does so for Frontier's own NXX codes, in any lists of such codes that are contained in the general reference portion of each directory. Birch's NXX codes shall appear in such lists in the same manner as Frontier's NXX information. In addition, when Birch is authorized to, and is offering, local service to Customers located within the geographic area covered by a specific directory, at Birch's request, Frontier shall include, at no charge, in the "Customer Guide" or comparable section of the applicable alphabetical directories, Birch's critical contact information for Birch's installation, repair and Customer service, as provided by Birch. Such critical contact information shall appear alphabetically by local exchange carrier and in accordance with Frontier's generally applicable policies. Birch shall be responsible for providing the necessary information to Frontier by the applicable close date for each affected directory.

**4.10 Directory Publication.**

Nothing in this Agreement shall require Frontier to publish a directory where it would not otherwise do so.

**4.11 Other Directory Services.**

Birch acknowledges that if Birch desires directory services in addition to those described herein, such additional services must be obtained under separate agreement with Frontier's directory publishing company.

**5. Voice Information Service Traffic**

5.1 For purposes of this Section 5, (a) Voice Information Service means a service that provides [i] recorded voice announcement information or [ii] a vocal discussion program open to the public, and (b) Voice Information Service Traffic means intraLATA switched voice traffic, delivered to a Voice Information Service. Voice Information Service Traffic does not include any form of Internet Traffic. Voice Information Service Traffic also does not include 555 traffic or similar traffic with AIN service interfaces, which traffic shall be subject to separate arrangements between the Parties. Voice Information Service Traffic is not subject to Reciprocal Compensation charges under Section 7 of the Interconnection Attachment.

5.2 If a Birch Customer is served by resold Frontier dial tone line Telecommunications Service, to the extent reasonably feasible, Frontier will route Voice Information Service Traffic originating from such Service to the appropriate Voice Information Service connected to Frontier's network unless a feature blocking such Voice Information Service Traffic has been installed. For such Voice Information Service Traffic, Birch shall pay to Frontier without discount any Voice Information Service provider charges billed by Frontier to Birch. Birch shall

pay Frontier such charges in full regardless of whether or not Birch collects such charges from its Customer.

- 5.3 Birch shall have the option to route Voice Information Service Traffic that originates on its own network to the appropriate Voice Information Service connected to Frontier's network. In the event Birch exercises such option, Birch will establish, at its own expense, a dedicated trunk group to the Frontier Voice Information Service serving switch. This trunk group will be utilized to allow Birch to route Voice Information Service Traffic originated on its network to Frontier. For such Voice Information Service Traffic, unless Birch has entered into a written agreement with Frontier under which Birch will collect from Birch's Customer and remit to Frontier the Voice Information Service provider's charges, Birch shall pay to Frontier without discount any Voice Information Service provider charges billed by Frontier to Birch. Birch shall pay Frontier such charges in full regardless of whether or not Birch collects such charges from its own Customer.

## **6. Intercept and Referral Announcements**

- 6.1 When a Customer changes its service provider from Frontier to Birch, or from Birch to Frontier, and does not retain its original telephone number, the Party formerly providing service to such Customer shall provide a referral announcement ("Referral Announcement") on the abandoned telephone number which provides the Customer's new number or other appropriate information, to the extent known to the Party formerly providing service. Notwithstanding the foregoing, a Party shall not be obligated under this Section to provide a Referral Announcement if the Customer owes the Party unpaid overdue amounts or the Customer requests that no Referral Announcement be provided.
- 6.2 Referral Announcements shall be provided, in the case of business Customers, for a period of not less than one hundred and twenty (120) days after the date the Customer changes its telephone number, and, in the case of residential Customers, not less than thirty (30) days after the date the Customer changes its telephone number; provided that if a longer time period is required by Applicable Law, such longer time period shall apply. Except as otherwise provided by Applicable Law, the period for a referral may be shortened by the Party formerly providing service if a number shortage condition requires reassignment of the telephone number.
- 6.3 This referral announcement will be provided by each Party at no charge to the other Party; provided that the Party formerly providing service may bill the Customer its standard Tariff charge, if any, for the referral announcement.

## **7. Originating Line Number Screening (OLNS)**

Upon Birch's request, Frontier will update its database used to provide originating line number screening (the database of information which indicates to an operator the acceptable billing methods for calls originating from the calling number (e.g., penal institutions, COCOTS).

## **8. Operations Support Systems (OSS) Services**

- 8.1 Definitions.

The terms listed below shall have the meanings stated below:

- 8.1.1 Frontier Operations Support Systems: Frontier systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing.
- 8.1.2 Frontier OSS Services: Access to Frontier Operations Support Systems functions. The term "Frontier OSS Services" includes, but is not limited to: (a) Frontier's provision of Birch Usage Information to Birch pursuant to Section 8.3 of this Attachment; and, (b) "Frontier OSS Information", as defined in Section 8.1.4 of this Attachment.
- 8.1.3 Frontier OSS Facilities: Any gateways, interfaces, databases, facilities, equipment, software, or systems, used by Frontier to provide Frontier OSS Services to Birch.
- 8.1.4 Frontier OSS Information: Any information accessed by, or disclosed or provided to, Birch through or as a part of Frontier OSS Services. The term "Frontier OSS Information" includes, but is not limited to: (a) any Customer Information related to a Frontier Customer or a Birch Customer accessed by, or disclosed or provided to, Birch through or as a part of Frontier OSS Services; and, (b) any Birch Usage Information (as defined in Section 8.1.6 of this Attachment) accessed by, or disclosed or provided to, Birch.
- 8.1.5 Frontier Retail Telecommunications Service: Any Telecommunications Service that Frontier provides at retail to subscribers that are not Telecommunications Carriers. The term "Frontier Retail Telecommunications Service" does not include any Exchange Access service (as defined in Section 3(16) of the Act, 47 U.S.C. § 153(16)) provided by Frontier.
- 8.1.6 Birch Usage Information: For a Frontier Retail Telecommunications Service purchased by Birch pursuant to the Resale Attachment, the usage information that Frontier would record if Frontier was furnishing such Frontier Retail Telecommunications Service to a Frontier end-user retail Customer.
- 8.1.7 Customer Information: CPNI of a Customer and any other non-public, individually identifiable information about a Customer or the purchase by a Customer of the services or products of a Party.
- 8.2 Frontier OSS Services.
- 8.2.1 Upon request by Birch, Frontier shall provide to Birch Frontier OSS Services. Such Frontier OSS Services will be provided in accordance with, but only to the extent required by, Applicable Law.
- 8.2.2 Subject to the requirements of Applicable Law, Frontier Operations Support Systems, Frontier Operations Support Systems functions, Frontier OSS Facilities, Frontier OSS Information, and the Frontier OSS Services that will be offered by Frontier, shall be as determined by Frontier. Subject to the requirements of Applicable Law, Frontier shall have the right to change Frontier Operations Support Systems, Frontier Operations Support Systems functions, Frontier OSS Facilities, Frontier OSS Information, and the Frontier OSS Services, from time-to-time, without the consent of Birch.
- 8.2.3 To the extent required by Applicable Law, in providing Frontier OSS Services to Birch, Frontier will comply with Frontier's applicable OSS



Change Management Guidelines, as such Guidelines are modified from time-to-time, including, but not limited to, the provisions of the Guidelines related to furnishing notice of changes in Frontier OSS Services. Frontier's OSS Change Management Guidelines will be set out on a Frontier website.

8.3 Birch Usage Information.

- 8.3.1 Upon request by Birch, Frontier shall provide to Birch Birch Usage Information. Such Birch Usage Information will be provided in accordance with, but only to the extent required by, Applicable Law.
- 8.3.2 Birch Usage Information will be available to Birch through Network Data Mover (NDM) or other such media as mutually agreed by both Parties.
- 8.3.3 Birch Usage Information will be provided in an ATIS EMI format.
- 8.3.4 Except as stated in this Section 8.3, subject to the requirements of Applicable Law, the manner in which, and the frequency with which, Birch Usage Information will be provided to Birch shall be determined by Frontier.

8.4 Access to and Use of Frontier OSS Facilities.

- 8.4.1 Frontier OSS Facilities may be accessed and used by Birch only to the extent necessary for Birch's access to and use of Frontier OSS Services pursuant to this Agreement.
- 8.4.2 Frontier OSS Facilities may be accessed and used by Birch only to provide Telecommunications Services to Birch Customers.
- 8.4.3 Birch shall restrict access to and use of Frontier OSS Facilities to Birch. This Section 8 does not grant to Birch any right or license to grant sublicenses to other persons, or permission to other persons (except Birch's employees, agents and contractors, in accordance with Section 8.4.7 of this Attachment), to access or use Frontier OSS Facilities.
- 8.4.4 Birch shall not (a) alter, modify or damage the Frontier OSS Facilities (including, but not limited to, Frontier software), (b) copy, remove, derive, reverse engineer, or decompile, software from the Frontier OSS Facilities, or (c) obtain access through Frontier OSS Facilities to Frontier databases, facilities, equipment, software, or systems, which are not offered for Birch's use under this Section 8.
- 8.4.5 Birch shall comply with all practices and procedures established by Frontier for access to and use of Frontier OSS Facilities (including, but not limited to, Frontier practices and procedures with regard to security and use of access and user identification codes).
- 8.4.6 All practices and procedures for access to and use of Frontier OSS Facilities, and all access and user identification codes for Frontier OSS Facilities: (a) shall remain the property of Frontier; (b) shall be used by Birch only in connection with Birch's use of Frontier OSS Facilities permitted by this Section 8; (c) shall be treated by Birch as Confidential Information of Frontier pursuant to Section 10 of the

General Terms and Conditions; and, (d) shall be destroyed or returned by Birch to Frontier upon the earlier of request by Frontier or the expiration or termination of this Agreement.

8.4.7 Birch's employees, agents and contractors may access and use Frontier OSS Facilities only to the extent necessary for Birch's access to and use of the Frontier OSS Facilities permitted by this Agreement. Any access to or use of Frontier OSS Facilities by Birch's employees, agents, or contractors, shall be subject to the provisions of this Agreement, including, but not limited to, Section 10 of the General Terms and Conditions and Section 8.5.3.2 of this Attachment.

8.5 Frontier OSS Information.

8.5.1 Subject to the provisions of this Section 8, in accordance with, but only to the extent required by, Applicable Law, Frontier grants to Birch a non-exclusive license to use Frontier OSS Information.

8.5.2 All Frontier OSS Information shall at all times remain the property of Frontier. Except as expressly stated in this Section 8, Birch shall acquire no rights in or to any Frontier OSS Information.

8.5.3 The provisions of this Section 8.5.3 shall apply to all Frontier OSS Information, except (a) Birch Usage Information, (b) CPNI of Birch, and (c) CPNI of a Frontier Customer or a Birch Customer, to the extent the Customer has authorized Birch to use the CPNI.

8.5.3.1 Frontier OSS Information may be accessed and used by Birch only to provide Telecommunications Services to Birch Customers.

8.5.3.2 Birch shall treat Frontier OSS Information that is designated by Frontier, through written or electronic notice (including, but not limited to, through the Frontier OSS Services), as "Confidential" or "Proprietary" as Confidential Information of Frontier pursuant to Section 10 of the General Terms and Conditions.

8.5.3.3 Except as expressly stated in this Section 8, this Agreement does not grant to Birch any right or license to grant sublicenses to other persons, or permission to other persons (except Birch's employees, agents or contractors, in accordance with Section 8.5.3.4 of this Attachment), to access, use or disclose Frontier OSS Information.

8.5.3.4 Birch's employees, agents and contractors may access, use and disclose Frontier OSS Information only to the extent necessary for Birch's access to, and use and disclosure of, Frontier OSS Information permitted by this Section 8. Any access to, or use or disclosure of, Frontier OSS Information by Birch's employees, agents or contractors, shall be subject to the provisions of this Agreement, including, but not limited to, Section 10 of the General Terms and Conditions and Section 8.5.3.2 of this Attachment.

8.5.3.5 Birch's license to use Frontier OSS Information shall expire upon the earliest of: (a) the time when the Frontier OSS

Information is no longer needed by Birch to provide Telecommunications Services to Birch Customers; (b) termination of the license in accordance with this Section 8; or (c) expiration or termination of this Agreement.

8.5.3.6 All Frontier OSS Information received by Birch shall be destroyed or returned by Birch to Frontier, upon expiration, suspension or termination of the license to use such Frontier OSS Information.

8.5.4 Unless sooner terminated or suspended in accordance with this Agreement or this Section 8 (including, but not limited to, Section 2.2 of the General Terms and Conditions and Section 8.6.1 of this Attachment), Birch's access to Frontier OSS Information through Frontier OSS Services shall terminate upon the expiration or termination of this Agreement.

8.5.5 Audits.

8.5.5.1 Frontier shall have the right (but not the obligation) to audit Birch to ascertain whether Birch is complying with the requirements of Applicable Law and this Agreement with regard to Birch's access to, and use and disclosure of, Frontier OSS Information.

8.5.5.2 Without in any way limiting any other rights Frontier may have under this Agreement or Applicable Law, Frontier shall have the right (but not the obligation) to monitor Birch's access to and use of Frontier OSS Information which is made available by Frontier to Birch pursuant to this Agreement, to ascertain whether Birch is complying with the requirements of Applicable Law and this Agreement, with regard to Birch's access to, and use and disclosure of, such Frontier OSS Information. The foregoing right shall include, but not be limited to, the right (but not the obligation) to electronically monitor Birch's access to and use of Frontier OSS Information which is made available by Frontier to Birch through Frontier OSS Facilities.

8.5.5.3 Information obtained by Frontier pursuant to this Section 8.5.5 shall be treated by Frontier as Confidential Information of Birch pursuant to Section 10 of the General Terms and Conditions; provided that, Frontier shall have the right (but not the obligation) to use and disclose information obtained by Frontier pursuant to Section 8.5.5 of this Attachment to enforce Frontier's rights under this Agreement or Applicable Law.

8.5.6 Birch acknowledges that the Frontier OSS Information, by its nature, is updated and corrected on a continuous basis by Frontier, and therefore that Frontier OSS Information is subject to change from time to time.

8.6 Liabilities and Remedies.

8.6.1 Any breach by Birch, or Birch's employees, agents or contractors, of the provisions of Sections 8.4 or 8.5 of this Attachment shall be

deemed a material breach of this Agreement. In addition, if Birch or an employee, agent or contractor of Birch at any time breaches a provision of Sections 8.4 or 8.5 of this Attachment and such breach continues for more than ten (10) days after written notice thereof from Frontier, then, except as otherwise required by Applicable Law, Frontier shall have the right, upon notice to Birch, to suspend the license to use Frontier OSS Information granted by Section 8.5.1 of this Attachment and/or the provision of Frontier OSS Services, in whole or in part.

8.6.2 Birch agrees that Frontier would be irreparably injured by a breach of Sections 8.4 or 8.5 of this Attachment by Birch or the employees, agents or contractors of Birch, and that Frontier shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any such breach. Such remedies shall not be deemed to be the exclusive remedies for any such breach, but shall be in addition to any other remedies available under this Agreement or at law or in equity.

8.7 Relation to Applicable Law.

The provisions of Sections 8.4, 8.5 and 8.6 of this Attachment with regard to the confidentiality of information shall be in addition to and not in derogation of any provisions of Applicable Law with regard to the confidentiality of information, including, but not limited to, 47 U.S.C. § 222, and are not intended to constitute a waiver by Frontier of any right with regard to protection of the confidentiality of the information of Frontier or Frontier Customers provided by Applicable Law.

8.8 Cooperation.

Birch, at Birch's expense, shall reasonably cooperate with Frontier in using Frontier OSS Services. Such cooperation shall include, but not be limited to, the following:

8.8.1 Upon request by Frontier, Birch shall by no later than the fifteenth (15th) day of the last month of each Calendar Quarter submit to Frontier reasonable, good faith estimates of the volume of each type of OSS transaction that Birch anticipates submitting in each week of the next Calendar Quarter.

8.8.2 Birch shall reasonably cooperate with Frontier in submitting orders for Frontier Services and otherwise using the Frontier OSS Services, in order to avoid exceeding the capacity or capabilities of such Frontier OSS Services.

8.8.3 Birch shall participate in cooperative testing of Frontier OSS Services and shall provide assistance to Frontier in identifying and correcting mistakes, omissions, interruptions, delays, errors, defects, faults, failures, or other deficiencies, in Frontier OSS Services.

8.9 Frontier Access to Information Related to Birch Customers.

8.9.1 Frontier shall have the right to access, use and disclose information related to Birch Customers that is in Frontier's possession (including, but not limited to, in Frontier OSS Facilities) to the extent such access, use and/or disclosure has been authorized by the Birch Customer in the manner required by Applicable Law.

- 8.9.2 Upon request by Frontier, Birch shall negotiate in good faith and enter into a contract with Frontier, pursuant to which Frontier may obtain access to Birch's operations support systems (including, systems for pre-ordering, ordering, provisioning, maintenance and repair, and billing) and information contained in such systems, to permit Frontier to obtain information related to Birch Customers (as authorized by the applicable Birch Customer), to permit Customers to transfer service from one Telecommunications Carrier to another, and for such other purposes as may be permitted by Applicable Law.

8.10 [Intentionally Left Blank].

8.11 Cancellations.

Frontier may cancel orders for service which have had no activity within thirty-one (31) consecutive calendar days after the original service due date.

## **9. Poles, Ducts, Conduits and Rights-of-Way**

- 9.1 Frontier shall afford Birch non-discriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by Frontier. Such access shall be provided in accordance with, but only to the extent required by, Applicable Law, pursuant to Frontier's applicable Tariffs, or, in the absence of an applicable Frontier Tariff, Frontier's generally offered form of license agreement, or, in the absence of such a Tariff and license agreement, a mutually acceptable agreement to be negotiated by the Parties.
- 9.2 Birch shall afford Frontier non-discriminatory access to poles, ducts, conduits and rights-of-way owned or controlled by Birch. Such access shall be provided pursuant to Birch's applicable Tariffs, or, in the absence of an applicable Birch Tariff, Birch's generally offered form of license agreement, or, in the absence of such a Tariff and license agreement, a mutually acceptable agreement to be negotiated by the Parties. The terms, conditions and prices offered to Frontier by Birch for such access shall be no less favorable than the terms, conditions and prices offered to Birch by Frontier for access to poles, ducts, conduits and rights of way owned or controlled by Frontier.

## **10. Telephone Numbers**

- 10.1 This Section applies in connection with Birch Customers served by Telecommunications Services provided by Frontier to Birch for resale.
- 10.2 Birch's use of telephone numbers shall be subject to Applicable Law and the rules of the North American Numbering Council, the North American Numbering Plan Administrator, the applicable provisions of this Agreement (including, but not limited to, this Section 10), and Frontier's practices and procedures for use and assignment of telephone numbers, as amended from time-to-time.
- 10.3 Subject to Sections 10.2 and 10.4 of this Attachment, if a Customer of either Frontier or Birch who is served by a Frontier Telecommunications Service ("VTS") changes the LEC that serves the Customer using such VTS (including a change from Frontier to Birch, from Birch to Frontier, or from Birch to a LEC other than Frontier), after such change, the Customer may continue to use with such VTS the telephone numbers that were assigned to the VTS for the use of such Customer by Frontier immediately prior to the change.

- 10.4 Frontier shall have the right to change the telephone numbers used by a Customer if at any time: (a) the Customer requests service at a new location, that is not served by the Frontier switch and the Frontier rate center from which the Customer previously had service; (b) continued use of the telephone numbers is not technically feasible; or, (c) in the case of Telecommunications Service provided by Frontier to Birch for resale, the type or class of service subscribed to by the Customer changes.
- 10.5 If service on a VTS provided by Frontier to Birch under this Agreement is terminated and the telephone numbers associated with such VTS have not been ported to a Birch switch, the telephone numbers shall be available for reassignment by Frontier to any person to whom Frontier elects to assign the telephone numbers, including, but not limited to, Frontier, Frontier Customers, Birch, or Telecommunications Carriers other than Frontier and Birch.
- 10.6 Birch may reserve telephone numbers only to the extent Frontier's Customers may reserve telephone numbers.

**11. Routing for Operator Services and Directory Assistance Traffic**

For a Frontier Telecommunications Service dial tone line purchased by Birch for resale pursuant to the Resale Attachment, upon request by Birch, Frontier will establish an arrangement that will permit Birch to route the Birch Customer's calls for operator and directory assistance services to a provider of operator and directory assistance services selected by Birch. Frontier will provide this routing arrangement in accordance with, but only to the extent required by, Applicable Law. Frontier will provide this routing arrangement pursuant to an appropriate written request submitted by Birch and a mutually agreed-upon schedule. This routing arrangement will be implemented at Birch's expense, with charges determined on an individual case basis. In addition to charges for initially establishing the routing arrangement, Birch will be responsible for ongoing monthly and/or usage charges for the routing arrangement. Birch shall arrange, at its own expense, the trunking and other facilities required to transport traffic to Birch's selected provider of operator and directory assistance services.

**12. Unauthorized Carrier Change Charges**

In the event either Party requests that the other Party install, provide, change, or terminate a Customer's Telecommunications Service (including, but not limited to, a Customer's selection of a primary Telephone Exchange Service Provider) without having obtained authorization from the Customer for such installation, provision, selection, change or termination in accordance with Applicable Laws, the requesting Party shall be liable to the other Party for all charges that would be applicable to the Customer for the initial change in the Customer's Telecommunications Service and any charges for restoring the Customer's Telecommunications Service to its Customer-authorized condition (all such charges together, the "Carrier Change Charges"), including to the appropriate primary Telephone Exchange Service provider. Such Carrier Change Charges may be assessed on the requesting Party by the other Party at any time after the Customer is restored to its Customer-authorized condition.

**13. Good Faith Performance**

If and, to the extent that, Frontier, prior to the Effective Date of this Agreement, has not provided in the State of South Carolina a Service offered under this Attachment, Frontier reserves the right to negotiate in good faith with Birch reasonable terms and conditions (including, without limitation, rates and implementation timeframes) for such Service; and, if the Parties cannot agree to such terms and conditions (including, without limitation,

rates and implementation timeframes), either Party may utilize the Agreement's dispute resolution procedures.

## INTERCONNECTION ATTACHMENT

### 1. General

Each Party shall provide to the other Party, in accordance with this Agreement, but only to the extent required by Applicable Law, interconnection at (i) any technically feasible Point(s) of Interconnection on Frontier's network in a LATA and/or (ii) a fiber meet point to which the Parties mutually agree under the terms of this Agreement, for the transmission and routing of Telephone Exchange Service and Exchange Access. By way of example, a technically feasible Point of Interconnection on Frontier's network in a LATA would include an applicable Frontier Tandem Interconnection Wire Center or Frontier End Office Interconnection Wire Center but, notwithstanding any other provision of this Agreement or otherwise, would not include a Birch Interconnection Wire Center, Birch switch or any portion of a transport facility provided by Frontier to Birch or another party between (x) a Frontier Interconnection Wire Center or switch and (y) the Interconnection Wire Center or switch of Birch or another party. For brevity's sake, the foregoing examples of locations that, respectively, are and are not "on Frontier's network" shall apply (and are hereby incorporated by reference) each time the term "on Frontier's network" is used in this Agreement.

### 2. Points of Interconnection and Trunk Types

#### 2.1 Point(s) of Interconnection.

2.1.1 Each Party, at its own expense, shall provide transport facilities to the technically feasible Point(s) of Interconnection on Frontier's network in a LATA selected by Birch.

#### 2.2 Trunk Types.

2.2.1 In interconnecting their networks pursuant to this Attachment, the Parties will use, as appropriate, the following separate and distinct trunk groups:

2.2.1.1 Interconnection Trunks for the transmission and routing of Reciprocal Compensation Traffic, translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic, and IntraLATA Toll Traffic, between their respective Telephone Exchange Service Customers, Tandem Transit Traffic, and, Measured Internet Traffic, all in accordance with Sections 5 through 8 of this Attachment;

2.2.1.2 Access Toll Connecting Trunks for the transmission and routing of Exchange Access traffic, including translated InterLATA toll free service access code (e.g., 800/888/877) traffic, between Birch Telephone Exchange Service Customers and purchasers of Switched Exchange Access Service via a Frontier access Tandem in accordance with Sections 9 through 11 of this Attachment; and

2.2.1.3 Miscellaneous Trunk Groups as mutually agreed to by the Parties, including, but not limited to: (a) choke trunks for traffic congestion and testing; and, (b) untranslated IntraLATA/InterLATA toll free service access code (e.g. 800/888/877) traffic.



- 2.2.2 Other types of trunk groups may be used by the Parties as provided in other Attachments to this Agreement (e.g., 911/E-911 Trunks) or in other separate agreements between the Parties (e.g., directory assistance trunks, operator services trunks, BLV/BLVI trunks or trunks for 500/555 traffic).
- 2.2.3 In accordance with the terms of this Agreement, the Parties will deploy One-Way Interconnection Trunks (trunks with traffic going in one direction, including one-way trunks and uni-directional two-way trunks) and/or Two-Way Interconnection Trunks (trunks with traffic going in both directions).
- 2.2.4 Birch shall establish, at the technically feasible Point(s) of Interconnection on Frontier's network in a LATA, separate Interconnection Trunk group(s) between such POI(s) and each Frontier Tandem in a LATA with a subtending End Office(s) to which Birch originates calls for Frontier to terminate.
- 2.2.5 In the event the volume of traffic between a Frontier End Office and a technically feasible Point of Interconnection on Frontier's network in a LATA, which is carried by a Final Tandem Interconnection Trunk group, exceeds (a) the Centum Call Seconds (Hundred Call Seconds) busy hour equivalent of one (1) DS1 at any time; (b) 200,000 minutes of use for a single month; and/or; (c) 600 busy hour Centum Call Seconds (BHCCS) of use for a single month: (i) if One-Way Interconnection Trunks are used, the originating Party shall promptly establish new or augment existing End Office One-Way Interconnection Trunk groups between the Frontier End Office and the technically feasible Point of Interconnection on Frontier's network; or, (ii) if Two-Way Interconnection Trunks are used, Birch shall promptly submit an ASR to Frontier to establish new or augment existing End Office Two-Way Interconnection Trunk group(s) between that Frontier End Office and the technically feasible Point of Interconnection on Frontier's network.
- 2.2.6 Except as otherwise agreed in writing by the Parties, the total number of Tandem Interconnection Trunks between a technically feasible Point of Interconnection on Frontier's network and a Frontier Tandem will be limited to a maximum of 240 trunks. In the event that the volume of traffic between a technically feasible Point of Interconnection on Frontier's network and a Frontier Tandem exceeds, or reasonably can be expected to exceed, the capacity of the 240 trunks, Birch shall promptly submit an ASR to Frontier to establish new or additional End Office Trunks to insure that the volume of traffic between the technically feasible Point of Interconnection on Frontier's network and the Frontier Tandem does not exceed the capacity of the 240 trunks.
- 2.3 One-Way Interconnection Trunks.
  - 2.3.1 Where the Parties use One-Way Interconnection Trunks for the delivery of traffic from Birch to Frontier, Birch, at Birch's own expense, shall:
    - 2.3.1.1 provide its own facilities for delivery of the traffic to the technically feasible Point(s) of Interconnection on Frontier's network in a LATA; and/or

- 2.3.1.2 obtain transport for delivery of the traffic to the technically feasible Point(s) of Interconnection on Frontier's network in a LATA (a) from a third party, or, (b) if Frontier offers such transport pursuant to a Frontier access Tariff, from Frontier.
  - 2.3.2 For each Tandem or End Office One-Way Interconnection Trunk group for delivery of traffic from Birch to Frontier with a utilization level of less than sixty percent (60%) for final trunk groups and eighty-five percent (85%) for high usage trunk groups, unless the Parties agree otherwise, Birch will promptly submit ASRs to disconnect a sufficient number of Interconnection Trunks to attain a utilization level of approximately sixty percent (60%) for all final trunk groups and eighty-five percent (85%) for all high usage trunk groups. In the event Birch fails to submit an ASR to disconnect One-Way Interconnection Trunks as required by this Section, Frontier may disconnect the excess Interconnection Trunks or bill (and Birch shall pay) for the excess Interconnection Trunks at the rates set forth in the Pricing Attachment.
  - 2.3.3 Where the Parties use One-Way Interconnection Trunks for the delivery of traffic from Frontier to Birch, Frontier, at Frontier's own expense, shall provide its own facilities for delivery of the traffic to the technically feasible Point(s) of Interconnection on Frontier's network in a LATA.
- 2.4 Two-Way Interconnection Trunks.
  - 2.4.1 Where the Parties use Two-Way Interconnection Trunks for the exchange of traffic between Frontier and Birch, Birch, at its own expense, shall:
    - 2.4.1.1 provide its own facilities to the technically feasible Point(s) of Interconnection on Frontier's network in a LATA; and/or
    - 2.4.1.2 obtain transport to the technically feasible Point(s) of Interconnection on Frontier's network in a LATA (a) from a third party, or, (b) if Frontier offers such transport pursuant to a Frontier access Tariff, from Frontier.
  - 2.4.2 Where the Parties use Two-Way Interconnection Trunks for the exchange of traffic between Frontier and Birch, Frontier, at its own expense, shall provide its own facilities to the technically feasible Point(s) of Interconnection on Frontier's network in a LATA.
  - 2.4.3 Prior to establishing any Two-Way Interconnection Trunks, Birch shall meet with Frontier to conduct a joint planning meeting ("Joint Planning Meeting"). At that Joint Planning Meeting, each Party shall provide to the other Party originating Centum Call Seconds (Hundred Call Seconds) information, and the Parties shall mutually agree on the appropriate initial number of End Office and Tandem Two-Way Interconnection Trunks and the interface specifications at the technically feasible Point(s) of Interconnection on Frontier's network in a LATA at which the Parties interconnect for the exchange of traffic. Where the Parties have agreed to convert existing One-Way Interconnection Trunks to Two-Way Interconnection Trunks, at the Joint Planning Meeting, the Parties shall also mutually agree on the conversion process and project intervals for conversion of such One-Way Interconnection Trunks to Two-Way Interconnection Trunks.

- 2.4.4 On a semi-annual basis, Birch shall submit a good faith forecast to Frontier of the number of End Office and Tandem Two-Way Interconnection Trunks that Birch anticipates Frontier will need to provide during the ensuing two (2) year period for the exchange of traffic between Birch and Frontier. Birch's trunk forecasts shall conform to the Frontier CLEC trunk forecasting guidelines as in effect at that time.
- 2.4.5 The Parties shall meet (telephonically or in person) from time to time, as needed, to review data on End Office and Tandem Two-Way Interconnection Trunks to determine the need for new trunk groups and to plan any necessary changes in the number of Two-Way Interconnection Trunks.
- 2.4.6 Two-Way Interconnection Trunks shall have SS7 Common Channel Signaling. The Parties agree to utilize B8ZS and Extended Super Frame (ESF) DS1 facilities, where available.
- 2.4.7 With respect to End Office Two-Way Interconnection Trunks, both Parties shall use an economic Centum Call Seconds (Hundred Call Seconds) equal to five (5). Either Party may disconnect End Office Two-Way Interconnection Trunks that, based on reasonable engineering criteria and capacity constraints, are not warranted by the actual traffic volume experienced.
- 2.4.8 Two-Way Interconnection Trunk groups that connect to a Frontier access Tandem shall be engineered using a design blocking objective of Neal-Wilkinson B.005 during the average time consistent busy hour. Two-Way Interconnection Trunk groups that connect to a Frontier local Tandem shall be engineered using a design blocking objective of Neal-Wilkinson B.01 during the average time consistent busy hour. Frontier and Birch shall engineer Two-Way Interconnection Trunks using Telcordia Notes on the Networks SR 2275 (formerly known as BOC Notes on the LEC Networks SR-TSV-002275).
- 2.4.9 The performance standard for final Two-Way Interconnection Trunk groups shall be that no such Interconnection Trunk group will exceed its design blocking objective (B.005 or B.01, as applicable) for three (3) consecutive calendar traffic study months.
- 2.4.10 Birch shall determine and order the number of Two-Way Interconnection Trunks that are required to meet the applicable design blocking objective for all traffic carried on each Two-Way Interconnection Trunk group. Birch shall order Two-Way Interconnection Trunks by submitting ASRs to Frontier setting forth the number of Two-Way Interconnection Trunks to be installed and the requested installation dates within Frontier's effective standard intervals or negotiated intervals, as appropriate. Birch shall complete ASRs in accordance with OBF Guidelines as in effect from time to time.
- 2.4.11 Frontier may (but shall not be obligated to) monitor Two-Way Interconnection Trunk groups using service results for the applicable design blocking objective. If Frontier observes blocking in excess of the applicable design objective on any Tandem Two-Way Interconnection Trunk group and Birch has not notified Frontier that it has corrected such blocking, Frontier may submit to Birch a Trunk

Group Service Request directing Birch to remedy the blocking. Upon receipt of a Trunk Group Service Request, Birch will complete an ASR to establish or augment the End Office Two-Way Interconnection Trunk group(s), or, if mutually agreed, to augment the Tandem Two-Way Interconnection Trunk group with excessive blocking and submit the ASR to Frontier within five (5) Business Days.

- 2.4.12 The Parties will review all Tandem Two-Way Interconnection Trunk groups that reach a utilization level of seventy percent (70%), or greater, to determine whether those groups should be augmented. Birch will promptly augment all Tandem Two-Way Interconnection Trunk groups that reach a utilization level of eighty percent (80%) by submitting ASRs for additional trunks sufficient to attain a utilization level of approximately seventy percent (70%), unless the Parties agree that additional trunking is not required. For each Tandem Two-Way Interconnection Trunk group with a utilization level of less than sixty percent (60%), unless the Parties agree otherwise, Birch will promptly submit ASRs to disconnect a sufficient number of Interconnection Trunks to attain a utilization level of approximately sixty percent (60%) for each respective group, unless the Parties agree that the Two-Way Interconnection Trunks should not be disconnected. In the event Birch fails to submit an ASR for Two-Way Interconnection Trunks in conformance with this Section, Frontier may disconnect the excess Interconnection Trunks or bill (and Birch shall pay) for the excess Interconnection Trunks at the applicable Frontier rates.
- 2.4.13 Because Frontier will not be in control of when and how many Two-Way Interconnection Trunks are established between its network and Birch's network, Frontier's performance in connection with these Two-Way Interconnection Trunk groups shall not be subject to any performance measurements and remedies under this Agreement, and, except as otherwise required by Applicable Law, under any FCC or Commission approved carrier-to-carrier performance assurance guidelines or plan.
- 2.4.14 Birch will route its traffic to Frontier over the End Office and Tandem Two-Way Interconnection Trunks in accordance with SR-TAP-000191, including but not limited to those standards requiring that a call from Birch to a Frontier End Office will first be routed to the End Office Interconnection Trunk group between Birch and the Frontier End Office.

### **3. Alternative Interconnection Arrangements**

#### **3.1 Fiber Meet Arrangement Provisions.**

- 3.1.1 Each Party may request a Fiber Meet arrangement by providing written notice thereof to the other Party if each of the following conditions has been met: (a) the Parties have consistently been exchanging an amount of applicable traffic (as set forth in Section 3.1.3 below) in the relevant exchanges equal to at least one (1) DS-3 and (b) neither Birch nor any of Birch's affiliates has an overdue balance on any bill rendered to Birch or Birch's affiliates for charges that are not subject to a good faith dispute. Any such Fiber Meet arrangement shall be subject to the terms of this Agreement. In addition, the establishment of any Fiber Meet arrangement is expressly conditioned upon the Parties mutually agreeing to the

technical specifications and requirements for such Fiber Meet arrangement including, but not limited to, the location of the Fiber Meet points, routing, equipment (e.g., specifications of Add/Drop Multiplexers, number of strands of fiber, etc.), software, ordering, provisioning, maintenance, repair, testing, augment and on any other technical specifications or requirements necessary to implement the Fiber Meet arrangement. For each Fiber Meet arrangement the Parties agree to implement, the Parties will complete and sign a Technical Specifications and Requirements document, the form of which is attached hereto as Exhibit A to Section 3 of the Interconnection Attachment Fiber Meet Arrangement Provisions. Each such document will be treated as Confidential Information.

3.1.2 The Parties agree to consider the possibility of using existing fiber cable with spare capacity, where available, to implement any such request for a Fiber Meet arrangement. If existing fiber cable with spare capacity is not available, the Parties agree to minimize the construction and deployment of fiber cable necessary for any Fiber Meet arrangement to which they agree. Except as otherwise agreed by the Parties, any and all Fiber Meet points established between the Parties shall extend no further than three (3) miles from an applicable Frontier Tandem or End Office and Frontier shall not be required to construct or deploy more than five hundred (500) feet of fiber cable for a Fiber Meet arrangement.

3.1.3 A Fiber Meet arrangement established under this Agreement may be used for the transmission and routing of only the following traffic types (over the Interconnection Trunks):

3.1.3.1 Reciprocal Compensation Traffic between the Parties' respective Telephone Exchange Service Customers;

3.1.3.2 Translated LEC IntraLATA toll free service access code (e.g., 800/888/877) traffic between the Parties' respective Telephone Exchange Service Customers;

3.1.3.3 IntraLATA Toll Traffic between the Parties' respective Telephone Exchange Service Customers;

3.1.3.4 Tandem Transit Traffic; and

3.1.3.5 Measured Internet Traffic.

To the extent that a Fiber Meet arrangement established under this Agreement is used for the transmission and routing of traffic of the types set forth in Sections 3.1.3.1 and/or 3.1.3.5, other than the obligation to pay intercarrier compensation charges pursuant to the terms of the Agreement, neither Party shall have any obligation to pay the other Party any charges in connection with any Fiber Meet arrangements established under this Agreement. To the extent that a Fiber Meet arrangement established under this Agreement is used for the transmission and routing of traffic of the type set forth in Section 3.1.3.2, the transport and termination of such traffic shall be subject to the rates and charges set forth in the Agreement and applicable Tariffs. To the extent that a Fiber Meet arrangement established under this Agreement is used for the transmission and routing of traffic of the type set forth in Section 3.1.3.3, the Party originating such traffic

shall compensate the terminating Party for the transport and termination of such traffic at the rates and charges set forth in the Agreement and applicable Tariffs. To the extent that a Fiber Meet arrangement established under this Agreement is used for the transmission and routing of traffic of the type set forth in Section 3.1.3.4, Frontier shall charge (and Birch shall pay) Frontier's applicable rates and charges as set forth in the Agreement and Frontier's applicable Tariffs, including transport charges to the terminating Frontier Tandem.

3.1.4 At Birch's written request, a Fiber Meet arrangement established under this Agreement may be used for the transmission and routing of the following traffic types over the following trunk types:

- 3.1.4.1 Operator services traffic from Birch's Telephone Exchange Service Customers to an operator services provider over operator services trunks;
- 3.1.4.2 Directory assistance traffic from Birch's Telephone Exchange Service Customers to a directory assistance provider over directory assistance trunks;
- 3.1.4.3 911 traffic from Birch's Telephone Exchange Service Customers to 911/E-911 Tandem Office(s)/Selective Router(s) over 911 trunks; and
- 3.1.4.4 Jointly-provided Switched Exchange Access Service traffic, including translated InterLATA toll free service access code (e.g., 800/888/877) traffic, between Birch's Telephone Exchange Service Customers and third-party purchasers of Switched Exchange Access Service via a Frontier access Tandem over Access Toll Connecting Trunks.

To the extent that a Fiber Meet arrangement established under this Agreement is used for the transmission and routing of any traffic of the types set forth in this Section 3.1.4 Frontier may bill (and Birch shall pay) Frontier's applicable Tariff rates and charges. Except as otherwise agreed in writing by the Parties or as expressly set forth in Sections 3.1.3 and/or 3.1.4 of this Interconnection Attachment, access services (switched and unswitched) and unbundled network elements shall not be provisioned on or accessed through Fiber Meet arrangements.

3.1.5 Birch will include traffic to be exchanged over Fiber Meet arrangements in its forecasts provided to Frontier under the Agreement.

#### **4. Initiating Interconnection**

- 4.1 If Birch determines to offer Telephone Exchange Services and to interconnect with Frontier in any LATA in which Frontier also offers Telephone Exchange Services and in which the Parties are not already interconnected pursuant to this Agreement, Birch shall provide written notice to Frontier of the need to establish Interconnection in such LATA pursuant to this Agreement.
- 4.2 The notice provided in Section 4.1 of this Attachment shall include (a) the initial Routing Point(s); (b) the applicable technically feasible Point(s) of

Interconnection on Frontier's network to be established in the relevant LATA in accordance with this Agreement; (c) Birch's intended Interconnection activation date; (d) a forecast of Birch's trunking requirements conforming to Section 14.2 of this Attachment; and (e) such other information as Frontier shall reasonably request in order to facilitate Interconnection.

- 4.3 The interconnection activation date in the new LATA shall be mutually agreed to by the Parties after receipt by Frontier of all necessary information as indicated above. Within ten (10) Business Days of Frontier's receipt of Birch's notice provided for in Section 4.1 of this Attachment, Frontier and Birch shall confirm the technically feasible Point of Interconnection on Frontier's network in the new LATA and the mutually agreed upon Interconnection activation date for the new LATA.

## **5. Transmission and Routing of Telephone Exchange Service Traffic**

### **5.1 Scope of Traffic.**

Section 5 prescribes parameters for Interconnection Trunks used for Interconnection pursuant to Sections 2 through 4 of this Attachment.

### **5.2 Trunk Group Connections and Ordering.**

- 5.2.1 For both One-Way and Two-Way Interconnection Trunks, if Birch wishes to use a technically feasible interface other than a DS1 or a DS3 facility at the POI, the Parties shall negotiate reasonable terms and conditions (including, without limitation, rates and implementation timeframes) for such arrangement; and, if the Parties cannot agree to such terms and conditions (including, without limitation, rates and implementation timeframes), either Party may utilize the Agreement's dispute resolution procedures.
- 5.2.2 When One-Way or Two-Way Interconnection Trunks are provisioned using a DS3 interface facility, if Birch orders the multiplexed DS3 facilities to a Frontier Central Office that is not designated in the NECA 4 Tariff as the appropriate Intermediate Hub location (i.e., the Intermediate Hub location in the appropriate Tandem subtending area based on the LERG), and the provision of such facilities to the subject Central Office is technically feasible, the Parties shall negotiate in good faith reasonable terms and conditions (including, without limitation, rates and implementation timeframes) for such arrangement; and, if the Parties cannot agree to such terms and conditions (including, without limitation, rates and implementation timeframes), either Party may utilize the Agreement's dispute resolution procedures.
- 5.2.3 Each Party will identify its Carrier Identification Code, a three or four digit numeric code obtained from Telcordia, to the other Party when ordering a trunk group.
- 5.2.4 For multi-frequency (MF) signaling each Party will out pulse ten (10) digits to the other Party, unless the Parties mutually agree otherwise.
- 5.2.5 Each Party will use commercially reasonable efforts to monitor trunk groups under its control and to augment those groups using generally accepted trunk-engineering standards so as to not exceed blocking

objectives. Each Party agrees to use modular trunk-engineering techniques for trunks subject to this Attachment.

5.3 Switching System Hierarchy and Trunking Requirements.

For purposes of routing Birch traffic to Frontier, the subtending arrangements between Frontier Tandems and Frontier End Offices shall be the same as the Tandem/End Office subtending arrangements Frontier maintains for the routing of its own or other carriers' traffic (i.e., traffic will be routed to the appropriate Frontier Tandem subtended by the terminating End Office serving the Frontier Customer). For purposes of routing Frontier traffic to Birch, the subtending arrangements between Birch Tandems and Birch End Offices shall be the same as the Tandem/End Office subtending arrangements that Birch maintains for the routing of its own or other carriers' traffic.

5.4 Signaling.

Each Party will provide the other Party with access to its databases and associated signaling necessary for the routing and completion of the other Party's traffic in accordance with the provisions of this Agreement and any applicable Tariff.

5.5 Grades of Service.

The Parties shall initially engineer and shall monitor and augment all trunk groups consistent with the Joint Process as set forth in Section 14.1 of this Attachment.

6. Traffic Measurement and Billing over Interconnection Trunks

6.1 For billing purposes, each Party shall pass Calling Party Number (CPN) information on at least ninety-five percent (95%) of calls carried over the Interconnection Trunks.

6.1.1 As used in this Section 6, "Traffic Rate" means the applicable Reciprocal Compensation Traffic rate, Measured Internet Traffic rate, intrastate Switched Exchange Access Service rate, interstate Switched Exchange Access Service rate, or intrastate/interstate Tandem Transit Traffic rate, as provided in the Pricing Attachment, an applicable Tariff, or, for Measured Internet Traffic, the FCC Internet Orders.

6.1.2 If the originating Party passes CPN on ninety-five percent (95%) or more of its calls, the receiving Party shall bill the originating Party the Traffic Rate applicable to each relevant minute of traffic for which CPN is passed. For any remaining (up to 5%) calls without CPN information, the receiving Party shall bill the originating Party for such traffic at the Traffic Rate applicable to each relevant minute of traffic, in direct proportion to the minutes of use of calls passed with CPN information.

6.1.3 If the originating Party passes CPN on less than ninety-five percent (95%) of its calls and the originating Party chooses to combine Reciprocal Compensation Traffic and Toll Traffic on the same trunk group, the receiving Party shall bill the higher of its interstate Switched Exchange Access Service rates or its intrastate Switched Exchange Access Services rates for all traffic that is passed without CPN, unless the Parties agree that other rates should apply to such traffic.



6.2 At such time as a receiving Party has the capability, on an automated basis, to use such CPN to classify traffic delivered over Interconnection Trunks by the other Party by Traffic Rate type (e.g., Reciprocal Compensation Traffic/Measured Internet Traffic, intrastate Switched Exchange Access Service, interstate Switched Exchange Access Service, or intrastate/interstate Tandem Transit Traffic), such receiving Party shall bill the originating Party the Traffic Rate applicable to each relevant minute of traffic for which CPN is passed. If the receiving Party lacks the capability, on an automated basis, to use CPN information on an automated basis to classify traffic delivered by the other Party by Traffic Rate type, the originating Party will supply Traffic Factor 1 and Traffic Factor 2. The Traffic Factors shall be supplied in writing by the originating Party within thirty (30) days of the Effective Date and shall be updated in writing by the originating Party quarterly. Measurement of billing minutes for purposes of determining terminating compensation shall be in conversation seconds (the time in seconds that the Parties equipment is used for a completed call, measured from the receipt of answer supervision to the receipt of disconnect supervision). Measurement of billing minutes for originating toll free service access code (e.g., 800/888/877) calls shall be in accordance with applicable Tariffs. Determination as to whether traffic is Reciprocal Compensation Traffic or Measured Internet Traffic shall be made in accordance with Paragraphs 8 and 79, and other applicable provisions, of the April 18, 2001 FCC Internet Order (including, but not limited to, in accordance with the rebuttable presumption established by the April 18, 2001 FCC Internet Order that traffic delivered to a carrier that exceeds a 3:1 ratio of terminating to originating traffic is Measured Internet Traffic, and in accordance with the process established by the April 18, 2001 FCC Internet Order for rebutting such presumption before the Commission) as modified by the November 5, 2008 FCC Internet Order and other applicable FCC orders and FCC Regulations.

6.3 Each Party reserves the right to audit all Traffic, up to a maximum of two audits per Calendar Year, to ensure that rates are being applied appropriately; provided, however, that either Party shall have the right to conduct additional audit(s) if the preceding audit disclosed material errors or discrepancies. Each Party agrees to provide the necessary Traffic data in conjunction with any such audit in a timely manner.

6.4 Nothing in this Agreement shall be construed to limit either Party's ability to designate the areas within which that Party's Customers may make calls which that Party rates as "local" in its Customer Tariffs.

6.5 If and, to the extent that, a Birch Customer receives V/FX Traffic, Birch shall promptly provide notice thereof to Frontier (such notice to include, without limitation, the specific telephone number(s) that the Customer uses for V/FX Traffic, as well as the LATA in which the Customer's station is actually physically located) and shall not bill Frontier Reciprocal Compensation, intercarrier compensation or any other charges for calls placed by Frontier's Customers to such Birch Customers.

## **7. Reciprocal Compensation Arrangements Pursuant to Section 251(b)(5) of the Act**

### **7.1 Reciprocal Compensation.**

The Parties shall exchange Reciprocal Compensation Traffic at the technically feasible Point(s) of Interconnection on Frontier's network in a LATA designated in accordance with the terms of this Agreement. The Party originating Reciprocal Compensation Traffic shall compensate the terminating Party for the transport and termination of such traffic to its Customer in accordance with Section

251(b)(5) of the Act at the equal and symmetrical rates stated in the Pricing Attachment; it being understood and agreed that Frontier shall charge (and Birch shall pay Frontier) the End Office Reciprocal Compensation rate set forth in the Pricing Attachment for Reciprocal Compensation Traffic Birch physically delivers to a POI at the Frontier Interconnection Wire Center in which the terminating Frontier End Office is located, and otherwise that Frontier shall charge (Birch shall pay Frontier) the Tandem Reciprocal Compensation rate set forth in the Pricing Attachment for Reciprocal Compensation Traffic Birch delivers to Frontier; it also being understood and agreed that Birch shall charge (and Frontier shall pay Birch) the End Office Reciprocal Compensation rate set forth in the Pricing Attachment for Reciprocal Compensation Traffic Frontier delivers to Birch. These rates are to be applied at the technically feasible Point(s) of Interconnection on Frontier's network in a LATA at which the Parties interconnect, whether such traffic is delivered by Frontier for termination by Birch, or delivered by Birch for termination by Frontier. No additional charges shall be assessed by the terminating Party for the transport and termination of such traffic from the technically feasible Point(s) of Interconnection on Frontier's network in a LATA to its Customer; provided, however, for the avoidance of any doubt, Birch shall also pay Frontier, at the rates set forth in the Pricing Attachment, for any multiplexing, cross connects or other collocation related Services that Birch obtains from Frontier. When Toll Traffic is delivered over the same Interconnection Trunks as Reciprocal Compensation Traffic, any port, transport or other applicable access charges related to the delivery of Toll Traffic from the technically feasible Point of Interconnection on Frontier's network in a LATA to the terminating Party's Customer shall be prorated so as to apply only to the Toll Traffic. The designation of traffic as Reciprocal Compensation Traffic for purposes of Reciprocal Compensation shall be based on the actual originating and terminating points of the complete end-to-end communication.

## 7.2 Traffic Not Subject to Reciprocal Compensation.

- 7.2.1 Reciprocal Compensation shall not apply to interstate or intrastate Exchange Access (including, without limitation, Virtual Foreign Exchange Traffic (i.e., V/FX Traffic), Information Access, or exchange services for Exchange Access or Information Access.
- 7.2.2 Reciprocal Compensation shall not apply to Internet Traffic.
- 7.2.3 Reciprocal Compensation shall not apply to Toll Traffic, including, but not limited to, calls originated on a 1+ presubscription basis, or on a casual dialed (10XXX/101XXXX) basis.
- 7.2.4 Reciprocal Compensation shall not apply to Optional Extended Local Calling Scope Arrangement Traffic.
- 7.2.5 Reciprocal Compensation shall not apply to special access, private line, or any other traffic that is not switched by the terminating Party.
- 7.2.6 Reciprocal Compensation shall not apply to Tandem Transit Traffic.
- 7.2.7 Reciprocal Compensation shall not apply to Voice Information Service Traffic (as defined in Section 5 of the Additional Services Attachment).
- 7.2.8 Reciprocal Compensation shall not apply to traffic that is not subject to Reciprocal Compensation under Section 251(b)(5) of the Act.

7.2.9 Reciprocal Compensation shall not apply to Virtual Foreign Exchange Traffic (i.e., V/FX Traffic). As used in this Agreement, "Virtual Foreign Exchange Traffic" or "V/FX Traffic" is defined as calls in which a Birch Customer is assigned a telephone number with an NXX Code (as set forth in the LERG) associated with an exchange that is different than the exchange (as set forth in the LERG) associated with the actual physical location of such Customer's station. For the avoidance of any doubt, Birch shall pay Frontier's originating access charges for all V/FX Traffic originated by a Frontier Customer, and Birch shall pay Frontier's terminating access charges for all V/FX Traffic originated by a Birch Customer.

7.3 The Reciprocal Compensation rates (including, but not limited to, the Reciprocal Compensation per minute of use charges) billed by Birch to Frontier shall not exceed the Reciprocal Compensation rates (including, but not limited to, Reciprocal Compensation per minute of use charges) billed by Frontier to Birch.

## **8. Other Types of Traffic**

- 8.1 Notwithstanding any other provision of this Agreement or any Tariff: (a) the Parties' rights and obligations with respect to any intercarrier compensation that may be due in connection with their exchange of Internet Traffic shall be governed by the terms of the FCC Internet Orders and other applicable FCC orders and FCC Regulations; and, (b) a Party shall not be obligated to pay any intercarrier compensation for Internet Traffic that is in excess of the intercarrier compensation for Internet Traffic that such Party is required to pay under the FCC Internet Orders and other applicable FCC orders and FCC Regulations.
- 8.2 Subject to Section 8.1 of this Attachment, interstate and intrastate Exchange Access, Information Access, exchange services for Exchange Access or Information Access, and Toll Traffic, shall be governed by the applicable provisions of this Agreement and applicable Tariffs.
- 8.3 For any traffic originating with a third party carrier and delivered by Birch to Frontier, Birch shall pay Frontier the same amount that such third party carrier would have been obligated to pay Frontier for termination of that traffic at the location the traffic is delivered to Frontier by Birch.
- 8.4 Any traffic not specifically addressed in this Agreement shall be treated as required by the applicable Tariff of the Party transporting and/or terminating the traffic.
- 8.5 The Parties may also exchange Internet Traffic at the technically feasible Point(s) of Interconnection on Frontier's network in a LATA established hereunder for the exchange of Reciprocal Compensation Traffic. Any intercarrier compensation that may be due in connection with the Parties' exchange of Internet Traffic shall be applied at such technically feasible Point of Interconnection on Frontier's network in a LATA in accordance with the FCC Internet Orders and other applicable FCC orders and FCC Regulations.

## **9. Transmission and Routing of Exchange Access Traffic**

### **9.1 Scope of Traffic.**

Section 9 prescribes parameters for certain trunks to be established over the Interconnections specified in Sections 2 through 5 of this Attachment for the transmission and routing of traffic between Birch Telephone Exchange Service

Customers and Interexchange Carriers ("Access Toll Connecting Trunks"), in any case where Birch elects to have its End Office Switch subtend a Frontier Tandem. This includes casually-dialed (1010XXX and 101XXXX) traffic.

9.2 Access Toll Connecting Trunk Group Architecture.

- 9.2.1 If Birch chooses to subtend a Frontier access Tandem, Birch's NPA/NXX must be assigned by Birch to subtend the same Frontier access Tandem that a Frontier NPA/NXX serving the same Rate Center Area subtends as identified in the LERG.
- 9.2.2 Birch shall establish Access Toll Connecting Trunks pursuant to applicable access Tariffs by which it will provide Switched Exchange Access Services to Interexchange Carriers to enable such Interexchange Carriers to originate and terminate traffic to and from Birch's Customers.
- 9.2.3 The Access Toll Connecting Trunks shall be two-way trunks. Such trunks shall connect the End Office Birch utilizes to provide Telephone Exchange Service and Switched Exchange Access to its Customers in a given LATA to the access Tandem(s) Frontier utilizes to provide Exchange Access in such LATA.
- 9.2.4 Access Toll Connecting Trunks shall be used solely for the transmission and routing of Exchange Access to allow Birch's Customers to connect to or be connected to the interexchange trunks of any Interexchange Carrier which is connected to a Frontier access Tandem.

10. Meet-Point Billing (MPB) Arrangements

- 10.1 Birch and Frontier will establish MPB arrangements in order to provide a common transport option to Switched Exchange Access Services customers via a Frontier access Tandem Switch in accordance with the MPB guidelines contained in the OBF's MECAB and MECOD documents, except as modified herein, and in Frontier's applicable Tariffs. The arrangements described in this Section 10 are intended to be used to provide Switched Exchange Access Service where the transport component of the Switched Exchange Access Service is routed through an access Tandem Switch that is provided by Frontier.
- 10.2 In each LATA, the Parties shall establish MPB arrangements for the applicable Birch Routing Point/Frontier Serving Interconnection Wire Center combinations.
- 10.3 Interconnection for the MPB arrangement shall occur at each of the Frontier access Tandems in the LATA, unless otherwise agreed to by the Parties.
- 10.4 Birch and Frontier will use reasonable efforts, individually and collectively, to maintain provisions in their respective state access Tariffs, and/or provisions within the National Exchange Carrier Association (NECA) Tariff No. 4, or any successor Tariff sufficient to reflect the MPB arrangements established pursuant to this Agreement.
- 10.5 In general, there are four alternative MPB arrangements possible, which are: Single Bill/Single Tariff, Multiple Bill/Single Tariff, Multiple Bill/Multiple Tariff, and Single Bill/Multiple Tariff, as outlined in the OBF MECAB Guidelines.

Each Party shall implement the "Multiple Bill/Single Tariff" or "Multiple Bill/Multiple

Tariff" option, as appropriate, in order to bill an IXC for the portion of the MPB arrangement provided by that Party. Alternatively, in former Bell Atlantic service areas, upon agreement of the Parties, each Party may use the New York State Access Pool on its behalf to implement the Single Bill/Multiple Tariff or Single Bill/Single Tariff option, as appropriate, in order to bill an IXC for the portion of the MPB arrangement provided by that Party.

- 10.6 The rates to be billed by each Party for the portion of the MPB arrangement provided by it shall be as set forth in that Party's applicable Tariffs, or other document that contains the terms under which that Party's access services are offered. For each Birch Routing Point/Frontier Serving Interconnection Wire Center combination, the MPB billing percentages for transport between the Birch Routing Point and the Frontier Serving Interconnection Wire Center shall be calculated in accordance with the formula set forth in Section 10.17 of this Attachment.
- 10.7 Each Party shall provide the other Party with the billing name, billing address, and Carrier Identification Code (CIC) of the IXC, and identification of the Frontier Interconnection Wire Center serving the IXC in order to comply with the MPB notification process as outlined in the MECAB document.
- 10.8 Frontier shall provide Birch with the Terminating Switched Access Detail Usage Data (EMI category 1101XX records) recorded at the Frontier access Tandem on cartridge or via such other media as the Parties may agree to, no later than ten (10) Business Days after the date the usage occurred.
- 10.9 Birch shall provide Frontier with the Originating Switched Access Detail Usage Data (EMI category 1101XX records) on cartridge or via such other media as the Parties may agree, no later than ten (10) Business Days after the date the usage occurred.
- 10.10 All usage data to be provided pursuant to Sections 10.8 and 10.9 of this Attachment shall be sent to the following addresses:
- To Birch:
- Birch Communications  
Attention: Jonathan Goff  
4885 Riverside Drive, Ste 304  
Macon, GA 31210
- For Frontier:
- Frontier Data Services  
ATTN: MPB  
180 S. Clinton Avenue  
Rochester, NY 14646
- Either Party may change its address for receiving usage data by notifying the other Party in writing pursuant to Section 29 of the General Terms and Conditions.
- 10.11 Birch and Frontier shall coordinate and exchange the billing account reference (BAR) and billing account cross reference (BACR) numbers or Operating Company Number ("OCN"), as appropriate, for the MPB arrangements described

in this Section 10. Each Party shall notify the other if the level of billing or other BAR/BACR elements change, resulting in a new BAR/BACR number, or if the OCN changes.

- 10.12 Each Party agrees to provide the other Party with notification of any errors it discovers in MPB data within thirty (30) calendar days of the receipt of the original data. The other Party shall attempt to correct the error and resubmit the data within ten (10) Business Days of the notification. In the event the errors cannot be corrected within such ten- (10) Business-Day period, the erroneous data will be considered lost. In the event of a loss of data, whether due to uncorrectable errors or otherwise, both Parties shall cooperate to reconstruct the lost data and, if such reconstruction is not possible, shall accept a reasonable estimate of the lost data based upon prior usage data.
- 10.13 Either Party may request a review or audit of the various components of access recording up to a maximum of two (2) audits per calendar year. All costs associated with each review and audit shall be borne by the requesting Party. Such review or audit shall be conducted subject to Section 7 of the General Terms and Conditions and during regular business hours. A Party may conduct additional audits, at its expense, upon the other Party's consent, which consent shall not be unreasonably withheld.
- 10.14 Except as expressly set forth in this Agreement, nothing contained in this Section 10 shall create any liability for damages, losses, claims, costs, injuries, expenses or other liabilities whatsoever on the part of either Party.
- 10.15 MPB will apply for all traffic bearing the 500, 900, toll free service access code (e.g. 800/888/877) (to the extent provided by an IXC) or any other non-geographic NPA which may be designated for such traffic in the future.
- 10.16 In the event Birch determines to offer Telephone Exchange Services in a LATA in which Frontier operates an access Tandem Switch, Frontier shall permit and enable Birch to subtenant the Frontier access Tandem Switch(es) designated for the Frontier End Offices in the area where there are located Birch Routing Point(s) associated with the NPA NXX(s) to/from which the Switched Exchange Access Services are homed.
- 10.17 Except as otherwise mutually agreed by the Parties, the MPB billing percentages for each Routing Point/Frontier Serving Interconnection Wire Center combination shall be calculated according to the following formula, unless as mutually agreed to by the Parties:

$$a / (a + b) = \text{Birch Billing Percentage}$$

and

$$b / (a + b) = \text{Frontier Billing Percentage}$$

where:

a = the airline mileage between Birch Routing Point and the actual point of interconnection for the MPB arrangement; and

b = the airline mileage between the Frontier Serving Interconnection Wire Center and the actual point of interconnection for the MPB arrangement.

- 10.18 Birch shall inform Frontier of each LATA in which it intends to offer Telephone Exchange Services and its calculation of the billing percentages which should apply for such arrangement. Within ten (10) Business Days of Birch's delivery of notice to Frontier, Frontier and Birch shall confirm the Routing Point/Frontier Serving Interconnection Wire Center combination and billing percentages.

**11. Toll Free Service Access Code (e.g., 800/888/877) Traffic**

The following terms shall apply when either Party delivers toll free service access code (e.g., 800/877/888)("8YY") calls to the other Party. For the purposes of this Section 11, the terms "translated" and "untranslated" refers to those toll free service access code calls that have been queried ("translated") or have not been queried ("untranslated") to an 8YY database. Except as otherwise agreed to by the Parties, all Birch originating "untranslated" 8YY traffic will be routed over a separate One-Way miscellaneous Trunk group.

- 11.1 When Birch delivers translated 8YY calls to Frontier to be completed by

11.1.1 an IXC:

- 11.1.1.1 Birch will provide an appropriate EMI record to Frontier;
- 11.1.1.2 Birch will bill the IXC the Birch's applicable Switched Exchange Access Tariff charges and the Birch's applicable Tariff query charges; and
- 11.1.1.3 Frontier will bill the IXC Frontier's applicable Switched Exchange Access Tariff charges.

11.1.2 Frontier:

- 11.1.2.1 Birch will provide an appropriate EMI record to Frontier; and
- 11.1.2.2 Birch will bill Frontier the Birch's Switched Exchange Access Tariff charges and the Birch's applicable Tariff query charge.

11.1.3 a toll free service access code service provider in that LATA:

- 11.1.3.1 Birch will provide an appropriate EMI record to Frontier and the toll free service access code service provider;
- 11.1.3.2 Birch will bill the toll free service access code service provider the Birch's applicable Switched Exchange Access Tariff charges and the Birch's applicable Tariff query charges; and
- 11.1.3.3 Frontier will bill the toll free service access code service provider Frontier's applicable Switched Exchange Access Tariff charges.

- 11.2 When Frontier performs the query and delivers translated 8YY calls, originated by Frontier's Customer or another LEC's Customer to Birch to be completed by

11.2.1 Birch:

- 11.2.1.1 Frontier will provide an appropriate EMI record to Birch; and

- 11.2.1.2 Frontier will bill Birch Frontier's applicable Switched Exchange Access Tariff charges and Frontier's applicable Tariff query charges.
  - 11.2.2 a toll free service access code service provider in that LATA:
    - 11.2.2.1 Frontier will provide an appropriate EMI record to Birch and the toll free service access code service provider;
    - 11.2.2.2 Frontier will bill the toll free service access code service provider Frontier's applicable Switched Exchange Access Tariff charges and Frontier's applicable Tariff query charges; and
    - 11.2.2.3 Birch will bill the toll free service access code service provider the Birch's applicable Switched Exchange Access Tariff charges.
- 11.3 When Birch delivers untranslated 8YY calls to Frontier to be completed by
  - 11.3.1 an IXC:
    - 11.3.1.1 Frontier will query the call and route the call to the appropriate IXC;
    - 11.3.1.2 Frontier will provide an appropriate EMI record to Birch;
    - 11.3.1.3 Frontier will bill the IXC Frontier's applicable Switched Exchange Access Tariff charges and Frontier's applicable Tariff query charges; and
    - 11.3.1.4 Birch will bill the IXC Birch's applicable Switched Exchange Access Tariff charges.
  - 11.3.2 Frontier:
    - 11.3.2.1 Frontier will query the call and complete the call;
    - 11.3.2.2 Frontier will provide an appropriate EMI record to Birch;
    - 11.3.2.3 Birch will bill Frontier the Birch's applicable Switched Exchange Access Tariff charges.
  - 11.3.3 a toll free service access code service provider in that LATA:
    - 11.3.3.1 Frontier will query the call and route the call to the appropriate toll free service access code service provider;
    - 11.3.3.2 Frontier will provide an appropriate EMI record to Birch and the toll free service access code service provider;
    - 11.3.3.3 Frontier will bill the toll free service access code service provider Frontier's applicable Switched Exchange Access Tariff and Frontier's applicable Tariff query charges; and
    - 11.3.3.4 Birch will bill the toll free service access code service provider the Birch's applicable Switched Exchange Access Tariff charges.



11.4 Frontier will not direct untranslated toll free service access code calls to Birch.

## **12. Tandem Transit Traffic**

- 12.1 As used in this Section, Tandem Transit Traffic is Telephone Exchange Service traffic that originates on Birch's network, and is transported through Frontier's Tandem to the subtending End Office or its equivalent of another carrier (CLEC, ILEC other than Frontier, Commercial Mobile Radio Service (CMRS) carrier, or other LEC ("Other Carrier"). Neither the originating nor terminating customer is a Customer of Frontier. Subtending End Offices shall be determined in accordance with and as identified in the Local Exchange Routing Guide (LERG). For the avoidance of any doubt, under no circumstances shall Frontier be required to transit traffic through a Frontier Tandem to a Central Office that the LERG does not identify as subtending that particular Frontier Tandem. Switched Exchange Access Service traffic is not Tandem Transit Traffic.
- 12.2 Tandem Transit Traffic Service provides Birch with the transport of Tandem Transit Traffic as provided below.
- 12.3 Tandem Transit Traffic may be routed over the Interconnection Trunks described in Sections 2 through 6 of this Attachment. Birch shall deliver each Tandem Transit Traffic call to Frontier's Tandem with CCS and the appropriate Transactional Capabilities Application Part ("TCAP") message to facilitate full interoperability of CLASS Features and billing functions.
- 12.4 Birch may use Tandem Transit Traffic Service only for traffic that originates on Birch's network and only to send traffic to an Other Carrier with whom Birch has a reciprocal traffic exchange arrangement (either via written agreement or mutual tariffs) that provides for the Other Carrier, to terminate or complete traffic originated by Birch and to bill Birch, and not to bill Frontier, for such traffic. Birch agrees not to use Frontier's Tandem Transit Traffic Service to send traffic to an Other Carrier with whom Birch does not have such a reciprocal traffic exchange arrangement or to send traffic that does not originate on Birch's network.
- 12.5 Birch shall pay Frontier for Tandem Transit Traffic Service at the rates specified in the Pricing Attachment. Frontier will not be liable for compensation to any Other Carrier for any traffic that is transported through Frontier's Tandem and Frontier reserves the right to assess to Birch any additional charges or costs any Other Carrier imposes or levies on Frontier for the delivery or termination of such traffic, including any Switched Exchange Access Service charges. If Frontier is billed by any Other Carrier for any traffic originated by Birch, Frontier may provide notice to Birch of such billing. Upon receipt of such notice, Birch shall immediately stop using Frontier's Tandem Transit Traffic Service to send any traffic to such Other Carrier until it has provided to Frontier certification that the Other Carrier has removed such billed charges from its bill to Frontier and that the Other Carrier will not bill Frontier for any traffic originated by Birch. Such certification must be signed by an authorized officer or agent of the Other Carrier and must be in a form acceptable to Frontier.
- 12.6 If Birch uses Tandem Transit Traffic Service for traffic volumes that exceed the Centum Call Seconds (Hundred Call Seconds) busy hour equivalent of 200,000 combined minutes of use per month (a DS1 equivalent) to the subtending End Office of a particular Other Carrier for any month (the "Threshold Level"). Birch shall use good faith efforts to establish direct interconnection with such Other Carrier and reduce such traffic volumes below the Threshold Level. If Frontier believes that Birch has not exercised good faith efforts promptly to obtain such

direct interconnection, either Party may use the Dispute Resolution processes of this Agreement.

- 12.7 If Birch fails to comply with Section 12 of this Attachment, such failure shall be a material breach of a material provision of this Agreement and Frontier may exercise any and all remedies under this Agreement and Applicable Law for such breach.
- 12.8 If or when a third party carrier plans to subsume a Birch switch, then Birch shall provide written notice to Frontier at least ninety (90) days before such subsuming service arrangement becomes effective so that Frontier may negotiate and establish direct interconnection with such third party carrier. Upon written request from Frontier, Birch shall offer to Frontier a service arrangement equivalent to or the same as Tandem Transit Traffic Service provided by Frontier to Birch as defined in this Section such that Frontier may terminate calls to a Central Office or its equivalent of a CLEC, ILEC other than Frontier, CMRS carrier, or other LEC, that subsumes a Birch Central Office or its equivalent ("Reciprocal Tandem Transit Service"). Birch shall offer such Reciprocal Transit Service arrangements under terms and conditions of an amendment to this Agreement or a separate agreement no less favorable than those provided in this Section.
- 12.9 Neither Party shall take any actions to prevent the other Party from entering into a direct and reciprocal traffic exchange arrangement with any carrier to which it originates, or from which it terminates, traffic.

### **13. Number Resources, Rate Center Areas and Routing Points**

- 13.1 Nothing in this Agreement shall be construed to limit or otherwise adversely affect in any manner either Party's right to employ or to request and be assigned any Central Office Codes ("NXX") pursuant to the Central Office Code Assignment Guidelines and any relevant FCC or Commission orders, as may be amended from time to time, or to establish, by Tariff or otherwise, Rate Center Areas and Routing Points corresponding to such NXX codes.
- 13.2 It shall be the responsibility of each Party to program and update its own switches and network systems pursuant to information provided on ASRs as well as the LERG in order to recognize and route traffic to the other Party's assigned NXX codes. Except as expressly set forth in this Agreement, neither Party shall impose any fees or charges whatsoever on the other Party for such activities.
- 13.3 Unless otherwise required by Commission order, the Rate Center Areas will be the same for each Party. During the term of this Agreement, Birch shall adopt the Rate Center Area and Rate Center Points that the Commission has approved for Frontier within the LATA and Tandem serving area. Birch shall assign whole NPA-NXX codes to each Rate Center Area unless otherwise ordered by the FCC, the Commission or another governmental entity of appropriate jurisdiction, or the LEC industry adopts alternative methods of utilizing NXXs.
- 13.4 Birch will also designate a Routing Point for each assigned NXX code. Birch shall designate one location for each Rate Center Area in which the Birch has established NXX code(s) as the Routing Point for the NPA-NXXs associated with that Rate Center Area, and such Routing Point shall be within the same LATA as the Rate Center Area but not necessarily within the Rate Center Area itself. Unless specified otherwise, calls to subsequent NXXs of Birch will be routed in the same manner as calls to Birch's initial NXXs.

- 13.5 Notwithstanding anything to the contrary contained herein, nothing in this Agreement is intended, and nothing in this Agreement shall be construed, to in any way constrain Birch's choices regarding the size of the local calling area(s) that Birch may establish for its Customers, which local calling areas may be larger than, smaller than, or identical to Frontier's local calling areas.

**14. Joint Network Implementation and Grooming Process; Forecasting**

**14.1 Joint Network Implementation and Grooming Process.**

Upon request of either Party, the Parties shall jointly develop an implementation and grooming process (the "Joint Grooming Process" or "Joint Process") which may define and detail, inter alia:

- 14.1.1 standards to ensure that Interconnection Trunks experience a grade of service, availability and quality which is comparable to that achieved on interoffice trunks within Frontier's network and in accord with all appropriate relevant industry-accepted quality, reliability and availability standards. Except as otherwise stated in this Agreement, trunks provided by either Party for Interconnection services will be engineered using a design-blocking objective of B.01.
- 14.1.2 the respective duties and responsibilities of the Parties with respect to the administration and maintenance of the trunk groups, including, but not limited to, standards and procedures for notification and discoveries of trunk disconnects;
- 14.1.3 disaster recovery provision escalations;
- 14.1.4 additional technically feasible Point(s) of Interconnection on Frontier's network in a LATA as provided in Section 2 of this Attachment; and
- 14.1.5 such other matters as the Parties may agree, including, e.g., End Office to End Office high usage trunks as good engineering practices may dictate.

**14.2 Trunk Forecasting Requirements.**

- 14.2.1 Initial Trunk Forecast Requirements. At least ninety (90) days before initiating interconnection in a LATA, Birch shall provide Frontier a two (2)-year traffic forecast that complies with the Frontier Interconnection Trunking Forecast Guide, as revised from time to time. This initial traffic forecast will provide the amount of traffic to be delivered to and from Frontier over each of the Interconnection Trunk groups in the LATA over the next eight (8) quarters.
- 14.2.2 Ongoing Trunk Forecast Requirements. Where the Parties have already established interconnection in a LATA, Birch shall provide a new or revised traffic forecast that complies with the Frontier Interconnection Trunking Forecast Guide when Birch develops plans or becomes aware of information that will materially affect the Parties' interconnection in that LATA. Instances that require a new or revised forecast include, but are not limited to: (a) Birch plans to deploy a new switch; (b) Birch plans to implement a new POI or network architecture; (c) Birch plans to rearrange its network; (d) Birch plans to convert a One-Way Interconnection Trunk group to a Two-Way Interconnection Trunk group; (e) Birch plans to convert a Two-Way

Interconnection Trunk group to a One-Way Interconnection Trunk group; or (f) Birch expects a significant change in interconnection traffic volume. In addition, upon request by either Party, the Parties shall meet to: (i) review traffic and usage data on End Office and Tandem Interconnection Trunk groups and (ii) determine whether the Parties should establish new Interconnection Trunk groups, augment existing Interconnection Trunk groups, or disconnect existing Interconnection Trunks.

- 14.2.3 Use of Trunk Forecasts. Trunk forecasts provided pursuant to this Agreement must be prepared in good faith but are not otherwise binding on Birch or Frontier.

**15. Number Portability - Section 251(B)(2)**

15.1 Scope.

The Parties shall provide Number Portability (NP) in accordance with rules and regulations as from time to time prescribed by the FCC.

15.2 Procedures for Providing LNP ("Local Number Portability").

The Parties will follow the LNP provisioning process recommended by the North American Numbering Council (NANC) and the Industry Numbering Council (INC), and adopted by the FCC. In addition, the Parties agree to follow the LNP ordering procedures established at the OBF. The Parties shall provide LNP on a reciprocal basis.

- 15.2.1 A Customer of one Party ("Party A") elects to become a Customer of the other Party ("Party B"). The Customer elects to utilize the original telephone number(s) corresponding to the Telephone Exchange Service(s) it previously received from Party A, in conjunction with the Telephone Exchange Service(s) it will now receive from Party B. After Party B has received authorization from the Customer in accordance with Applicable Law and sends an LSR to Party A, Parties A and B will work together to port the Customer's telephone number(s) from Party A's network to Party B's network.

- 15.2.2 When a telephone number is ported out of Party A's network, Party A will remove any non-proprietary line based calling card(s) associated with the ported number(s) from its Line Information Database (LIDB). Reactivation of the line-based calling card in another LIDB, if desired, is the responsibility of Party B or Party B's Customer.

- 15.2.3 When a Customer of Party A ports their telephone numbers to Party B and the Customer has previously secured a reservation of line numbers from Party A for possible activation at a future point, these reserved but inactive numbers may be ported along with the active numbers to be ported provided the numbers have been reserved for the Customer. Party B may request that Party A port all reserved numbers assigned to the Customer or that Party A port only those numbers listed by Party B. As long as Party B maintains reserved but inactive numbers ported for the Customer, Party A shall not reassign those numbers. Party B shall not reassign the reserved numbers to another Customer.

- 15.2.4 When a Customer of Party A ports their telephone numbers to Party B, in the process of porting the Customer's telephone numbers, Party A shall implement the ten-digit trigger feature where it is available. When Party A receives the porting request, the unconditional trigger shall be applied to the Customer's line before the due date of the porting activity. When the ten-digit unconditional trigger is not available, Party A and Party B must coordinate the disconnect activity.
- 15.2.5 The Parties shall furnish each other with the Jurisdiction Information Parameter (JIP) in the Initial Address Message (IAM), according to industry standards.
- 15.2.6 Where LNP is commercially available, the NXXs in the office shall be defined as portable, except as noted in 15.2.7, and translations will be changed in the Parties' switches to open those NXXs for database queries in all applicable LNP capable offices within the LATA of the given switch(es). On a prospective basis, all newly deployed switches will be equipped with LNP capability and so noted in the LERG.
- 15.2.7 All NXXs assigned to LNP capable switches are to be designated as portable unless a NXX(s) has otherwise been designated as non-portable. Non-portable NXXs include NXX codes assigned to paging services; NXX codes assigned for internal testing and official use, and any other NXX codes required to be designated as non-portable by the rules and regulations of the FCC. NXX codes assigned to mass calling on a choked network may not be ported using LNP technology but are portable using methods established by the NANC and adopted by the FCC. On a prospective basis, newly assigned codes in switches capable of porting shall become commercially available for porting with the effective date in the network.
- 15.2.8 Both Parties' use of LNP shall meet the performance criteria specified by the FCC. Both Parties will act as the default carrier for the other Party in the event that either Party is unable to perform the routing necessary for LNP.
- 15.3 Procedures for Providing NP Through Full NXX Code Migration.
- Where a Party has activated an entire NXX for a single Customer, or activated at least eighty percent (80%) of an NXX for a single Customer, with the remaining numbers in that NXX either reserved for future use by that Customer or otherwise unused, if such Customer chooses to receive Telephone Exchange Service from the other Party, the first Party shall cooperate with the second Party to have the entire NXX reassigned in the LERG (and associated industry databases, routing tables, etc.) to an End Office operated by the second Party. Such transfer will be accomplished with appropriate coordination between the Parties and subject to appropriate industry lead times for movements of NXXs from one switch to another. Neither Party shall charge the other in connection with this coordinated transfer.
- 15.4 Procedures for LNP Request.
- The Parties shall provide for the requesting of End Office LNP capability on a reciprocal basis through a written request. The Parties acknowledge that Frontier has deployed LNP throughout its network in compliance with FCC 96-286 and other applicable FCC Regulations.

- 15.4.1 If Party B desires to have LNP capability deployed in an End Office of Party A, which is not currently capable, Party B shall issue a LNP request to Party A. Party A will respond to the Party B, within ten (10) days of receipt of the request, with a date for which LNP will be available in the requested End Office. Party A shall proceed to provide for LNP in compliance with the procedures and timelines set forth in FCC 96-286, Paragraph 80, and FCC 97-74, Paragraphs 65 through 67.
- 15.4.2 The Parties acknowledge that each can determine the LNP-capable End Offices of the other through the Local Exchange Routing Guide (LERG). In addition, the Parties shall make information available upon request showing their respective LNP-capable End Offices, as set forth in this Section 15.4.
- 15.5 Birch shall submit orders to port numbers electronically using an LSR via the Frontier web Graphical User Interface ("GUI") or Electronic Data Interface ("EDI") pursuant to the instructions, business rules and guidelines set forth on the Frontier Communications website (formerly referred to as the Frontier wholesale website).

**16. Good Faith Performance**

If and, to the extent that, Frontier, prior to the Effective Date of this Agreement, has not provided in the State of South Carolina a Service offered under this Attachment, Frontier reserves the right to negotiate in good faith with Birch reasonable terms and conditions (including, without limitation, rates and implementation timeframes) for such Service; and, if the Parties cannot agree to such terms and conditions (including, without limitation, rates and implementation timeframes), either Party may utilize the Agreement's dispute resolution procedures.